

Chapter X
OFFENCES AGAINST FEMALES
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Sexual Offence*. In a case in which a man is charged with relative to rape should be remembered : " It is an accusation

by the party accused though innocent." The first consideration is the credibility of the female's story. The question of consent and corroboration available must then be considered.

reputation, reporting the occurrence without delay, marks of violence on her person, signs of struggle at the scene, and any other evidence corroborating her statement.

concealment of the occurrence for any unreasonable length of time, making no outcry in a place where she might have been heard, and no corroboration of her story.

In general, the evidence of one witness in sexual cases should be corroborated in some material particular by other evidence

female alone against that of the man. The fact that she made

Chap. 7.

In a case of alleged rape the injured female should without delay, if she consents, be examined by a doctor. If she is under sixteen her parents' consent should be obtained. This examination cannot be made without her consent, but her refusal to undergo such an examination will naturally discredit her story.

The Sexual Offences Act, 1956 consolidates the statute law relating to sexual crimes, abduction, procuration and prostitution

Felonies and attempts at felonies under the Act are indictable but not triable at Quarter Sessions and they are punishable by imprisonment (2nd Sched., Part 1).

The mode of trial and penalties for " offences " under this Act, are dealt with in Part II of the 2nd Sched., which directs that many of these " offences " in the Act are indictable (but several of them are not triable at Quarter Sessions), that some are indictable subject to the sanction of the Attorney General or prosecution by the Director of Public Prosecutions, that some are merely indictable, that some are indictable or triable summarily, that some are triable summarily subject to the right of the accused under M.C. Act. 1952. s. 25, to claim trial on indictment and some are triable at Quarter Sessions under s. 2, Admin. of Justice (Misc. Prov.) Act, 1938 (C.J.A. Act, 1962).

" Sexual intercourse " whether natural or unnatural shall be deemed complete upon proof of penetration only (s. 44). In the Act " man " without the addition of " boy " or vice versa does not prevent any provision of the Act applying to any person to whom it would have applied if both words were used, and similarly with the words " woman " and " girl " (s. 46).

Under s. 40 a constable may arrest a person without a warrant if he has reasonable cause to suspect him of having committed or of attempting to commit an offence under s. 22 (procuring a woman to be a prostitute) or s. 23 (procuring a girl under 21 to have unlawful sexual intercourse).

Under s. 41 anyone may arrest without a warrant a person found committing an offence under s. 30 (man living on prostitution), s. 31 (woman controlling a prostitute) or s. 32 (man soliciting in public place for immoral purposes).

S. 42 allows a justice, on sworn information that there is reasonable cause to suspect that a house or part of it is used by a woman for prostitution and that a man residing or frequenting the

authorising a constable to enter and search the house and to arrest the man.

The C. and Y.P. Act, 1933, s. 40, allows the issue of a warrant to search for and remove a child or young person. In addition s. 43 of this Sexual Offences Act, 1956, empowers a justice to issue a warrant to search for and remove a woman detained for immoral purposes and so detained against her will or if she is under 16 or is a defective (see s. 45) or is under 18 and is so detained against the will of her parent or guardian.

S. 39 directs that the wife or husband of the accused shall be competent to give evidence on a charge of any offence under this 1956 Act, for the defence or the prosecution (except in so far it is excluded in the case of s. 12 (buggery), s. 15 (indecent assault on a man) and s. 16 (assault with intent to commit buggery)). Provided that:

(a) the wife or husband shall not be compellable to give evidence or to disclose in evidence any communication made to him or her during the marriage by the accused, and

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(6) the failure of the wife or husband of the accused to give evidence shall not be commented on by the prosecution. This section 39 shall not affect s. 1 of the Criminal Evidence Act, 1898 or any case where the wife or the husband of the accused

the accused.

For the provisions of the Indecency with Children Act, 1960, see Chap. 11.

Rape and Similar Offences. Sexual Offences Act, 1956, s. 1. It is a felony for a man to rape a woman and it will be rape where a man induces a married woman to have sexual intercourse with him by impersonating her husband.

Rape is a felony at common law being the unlawful carnal knowledge of a female by force or fraud against her will. B)' ss. 2, 3,

intercourse in any part of the world

(a) by threats or intimidation (s. 2)

(6) by false pretensions or false representations (s. 3)

(c) by applying or administering to or causing to be taken

overpower her so as thereby to enable any man to do so (s. 4).

evidence of one witness only unless the witness is corroborated in some material particular by evidence implicating the accused.

Carnal knowledge means penetration to any degree, and to constitute rape there must be proof of penetration. It is no

fact, or that she was a prostitute. The consent of the woman is a good defence, but such consent must have been freely given and not induced by fraud, threats, etc. If the woman is of weak intellect and incapable of giving a true consent the accused may be convicted of rape.

A boy under the age of fourteen cannot be convicted of rape as it is presumed that he is physically incapable of the act. Generally speaking a husband cannot be convicted of rape upon

convicted if husband and wife have been legally separated

woman may be liable as principals in the second degree as present aiding and abetting in the felony of rape. A boy under fourteen can be convicted of indecent assault.

Sexual Offences Act, 1956, s. 5. It is a felony for a man to have unlawful sexual intercourse with a girl under 13.

S. 6. It is an offence for a man to have unlawful sexual intercourse with a girl not under 13 but under 16.

However if the girl is under 16 the man will not be guilty of this offence if:

(a) the girl is his " wife " (an invalid marriage as she is under age) or

(6) the man is under 24, has not been previously charged with a like offence and has reasonable cause for his belief that the girl is 16 or over.

(C.J.A. Act 1962, 4th Sched.).

intercourse with a woman who is a defective. But he will not be

Act, 1959, s. 127).

Section 9. It is an offence for a person to procure a woman who is a defective to have unlawful sexual intercourse in any part of the world. But he will not be guilty of this offence if he does not

Section 45. " Defective " means a person suffering from severe subnormality within the meaning of the Mental Health Act, 1959.

It is an offence for a man who is employed in, or is the manager of a hospital or mental nursing home to have unlawful sexual intercourse on the premises with a woman who is a patient receiving treatment for mental disorder, or for a man to have un-

is in his custody or care, or subject to his guardianship. But a man will not be guilty of this offence if he does not know and has no reason to suspect her to be a mentally disordered patient (Mental Health Act, 1959, s. 128).

Any offence of rape and carnal knowledge of mental defectives

Prosecutions (see Appendix III).

offence for a person to make an indecent assault on a woman. A girl under 16 cannot in law give any consent to such an assault.

However where marriage is invalid (the wife being under 16) the husband will not be guilty of this offence if he has reasonable

offence only if he knew or had reason to suspect her to be a defective.

A constable has power to arrest without warrant for indecent assaults on young persons (C. and Y.P. Act, 1933, s. 13).

(M.C. Act, 1952, s. 19 and 1st Sched. and C.J.A. Act, 1962). Certain indecent assaults should be reported to the Director of Public Prosecutions (see Appendix III).

Incest. Sexual Offences Act, 1956, s. 10. It is an offence for a

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man to have sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, sister or mother.

" Sister " in this section includes half sister and the relation above in this section applies although not traced through lawful wedlock.

Section 11. It is an offence for a woman aged 16 or over to permit a man whom she knows to be her grandfather, father,

ship
above in this section applies although not traced through lawful wedlock.

Under s. 38 of the Act, on a man being convicted of incest or attempted incest against a girl under 21 the court may, by order, divest him of all authority over her, etc.

Procuration. Procuration is the obtaining of females for slave traffic, particularly in connection with the procuring of

abroad unless there is sufficient evidence as to the *bona fide** character of the engagement. The real object of the employer or agent may be concealed under the pretext of engaging the victim for some theatrical or other employment.

of Metropolitan Police, who is the central authority for this country under the International Agreement of 1904, arrived at to try to put an end to this white slave traffic. Also, both at home and abroad, friendless or unprotected girls are liable to fall into the hands of unscrupulous persons.

Sexual Offences Act, 1956. 22. It is an offence for a person to

(a) a woman to become in any part of the world a common prostitute: or

(fc) a woman to leave the United Kingdom intending her to become an inmate of or frequent a brothel elsewhere: or

(c) a woman to leave her usual place of abode in the United Kingdom, intending her to become an inmate of or frequent a brothel in any part of the world for the purposes of prostitution.

Conviction of any of the above offences cannot take place on the evidence of one witness only unless the witness is corroborated

21 to have unlawful sexual intercourse in any part of the world with a third person.

one witness must be corroborated materially by evidences implicating the accused.

Section 24. It is an offence for a person to detain a woman against her will on any premises with the intention that she shall have unlawful sexual intercourse with men or a particular man or to detain a woman against her will in a brothel. This section states that withholding her clothes or any of her property or threatening legal proceedings if she takes away clothes provided for her by him or on his directions shall be deemed to be such detention.

taking or having any clothes she needed to enable her to leave such premises or brothel.

Sections 25, 26 and 27 declare that where a person who is the

suffers a female (see below) to resort or be on those premises for the purpose of having unlawful sexual connection with men or a particular man, such person commits crime as follows: (a) it is felony if the female is a girl under 13 (s. 25) (6) it is an offence if the female is a girl not under 13 but

(c) it is an offence if the female is a defective (see s. 45) but if such person did not know and had no reason to suspect her to be a defective he will not be guilty of this offence (s. 27).

Children and Young Persons Act, 1933, s. 61. A child or young person (under seventeen) who has no parent or guardian or an unfit or neglectful parent or guardian and is falling in to bad associations or is exposed to moral danger, or is beyond control

the First Schedule to the Act) or is a member of a household where same has occurred, (or is a female member of a household where a member has committed or attempted to commit incest; Sexual Offences Act, 1956, Third Sched.) may be dealt with as needing care or protection. See " Care or Protection " Chap. 12.

Abduction of Females. Sexual Offences Act, 1956, s. 17. It is felony for a person to take away or detain a woman against her will with the intention that she shall marry or have unlawful sexual intercourse with that or any other person if she is so taken away or detained either by force or for the sake of her property or expectations of property (being any interest in property the property of a person to whom she is a next of kin).

Section 18. It is felony for a person to take or detain a girl under 21 out of the possession of her parent or guardian (who is any person having the lawful care or charge of her) against his will, if she has property (or any interest in property) or expectations of property (being a next of kin) and is so taken or detained by fraud and with the intention that she shall marry or have unlawful sexual intercourse with that or any other person.

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Section 19. It is an offence for a person to take an unmarried girl under 18 out of the possession of her parent or guardian (person who has lawful care or charge of her) against his will, if she

reasonable cause that the girl is 18 or over will avoid this offence. C. and Y.P. Act, 1933, s. 40 provides for a warrant to search for and remove such a girl in cases of necessity.

Sexual Offences Act, 1956, s. 20. It is an offence for a person acting without lawful authority to take an unmarried girl under 16 out of the possession of her parent or guardian (lawful) against his will.

Section 21. It is an offence for a person to take a woman who is a defective out of the possession of her parent or guardian (lawful) against his will if she is taken with the intention that she shall have unlawful sexual intercourse with men or with a particular man.

However a person is not guilty of this offence if he does not know and has no reason to suspect her to be a defective.

f Prostitution. Sexual Offences Act, 1956. s. 28. It is an offence the commission of unlawful sexual intercourse with, or of an

This section states that a person shall be deemed to have caused or encouraged this offence if he knowingly allowed her to consort with or to enter or continue in the employment of any prostitute or person of known immoral character.

of such girl are so responsible for her as regards this section. " Parent " and " legal guardian " are explained in this section.

the prostitution in any part of the world of a woman who is a defective. Unless he does not know and has no reason to suspect her to be a defective.

or in part on the earnings of prostitution.

Under this section, a man, unless he proves the contrary, will be

is aiding, abetting or compelling her prostitution with others.

Section 31. It is an offence for a woman for purposes of gain to assist or abet another person in the commission of any of the offences mentioned in a way which shows she is aiding, abetting or compelling her prostitution.

Section 32. It is an offence for a person persistently to solicit or importune in a public place for immoral purposes.

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knowingly to suffer common prostitutes or reputed thieves to assemble and continue there.

Refreshment Houses Act, 1860, s. 32. It is an offence for a person licensed to keep a refreshment house under the Act knowingly to suffer prostitutes, etc., to assemble or continue on his premises.

Licensing Act, 1953, s. 139. The holder of a Justices' licence (and the holder of an occasional licence (s. 148)) shall not knowingly permit his premises to be the habitual resort or place of meeting of reputed prostitutes. He may only allow such to remain in his premises to obtain reasonable refreshment for such time as is necessary for the purpose.

Licensing Act, 1961, s. 3. If the licence is a restaurant, residential, or residential and restaurant licence or a licence under the Refreshment Houses Act, 1860, the holder is liable to disqualification for holding such licences if he is convicted of permitting the premises to be the resort of prostitutes. The premises may also be disqualified.

Brothels. A common brothel is a house or room used by persons of opposite sexes for the purpose of prostitution.

Keeping a brothel is a misdemeanour at common law, being a common nuisance as endangering the public peace and corrupt

The Disorderly Houses Acts, 1751 and 1818, declare that the person managing a bawdy house, brothel or other disorderly house (which is a nuisance at common law) will be deemed the keeper thereof, though not the real owner or keeper, and allows the issue of a warrant to arrest such person.

A disorderly house means premises kept open to persons and so carried on as to contravene law and good order.

Sexual Offences Act, 1956, s. 33. It is an offence for a person to keep a brothel or to manage or act or assist in the management of a brothel.

Section 34. It is an offence for the lessee or landlord of any premises to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel, or, where the whole or part of the premises is used as a brothel, to be wilfully a party to that use continuing.

Section 35. It is an offence for the tenant or occupier or person in charge of any premises to permit the whole or part of the premises to be used as a brothel. The rest of this section and the First Schedule to the Act deal with the rights and duties of the landlord or lessor of such premises.

Offences under the above three sections maybe dealt with summarily as directed in the 2nd Schedule to the Act.

Licensing Act, 1953, s. 140. The holder of a Justices' licence (or a brothel. On conviction for this offence, whether under this

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section or otherwise his licence shall be forfeited and by *a. 30* of this Act he is disqualified for holding a Justices' licence. Under *s. 3* of the Licensing Act 1961 if the licence is a restaurant, residential, or residential and restaurant licence or a licence under the Refreshment Houses Act, 1860, the holder is liable to disqualification as well as forfeiture of the licence, and the premises may be disqualified.

A licensee was held guilty of this offence although no evidence of a previous case of like kind on the premises was given, and although he was absent from the premises at the time (*? v. Holland. Lincolnshire Justices* (1882)).

Prevention of Crimes Act, 1871, *s. 11*. Every person who occupies or keeps a brothel and knowingly lodges or harbours thieves or reputed thieves or permits them to assemble thereon or allows the deposit of stolen goods therein commits a summary offence.

Children and Young Persons Act, 1933, *s. 3*. It is a misdemeanour punishable on indictment or on summary conviction for any person having the custody, charge or care of any child or young person aged four or upwards and under sixteen to allow such child or young person to reside in or frequent a brothel.

Arrest and Search Warrant. As will be seen later under "Arrest, Search Warrant and Procedure" in Chap. 12, the Children and Young Persons Act, 1933, *ss. 13, 40*, gives constables certain powers of arrest without warrant and allows justices to issue search warrants in cases where children or young persons are subjected to any of the offences mentioned in the 1st Schedule to the Act, which now includes many offences under the Sexual Offences Act, 1956, and the Indecency with Children Act, 1960.

Also *ss. 40, 41* of this 1956 Act gives further powers of arrest without warrant for certain offences (see above).

Chapter XI INDECENCY

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Indecent Conduct. Offences against decency may be committed by language and behaviour, by the giving of some display or exhibition, by exposure of the person, or by making public any indecent matter. For indecent assault see "Assault," Chap. 8.

Indecent Language. "Indecent" may be denned as unbecoming, not decent, contrary to propriety, or offensive to modesty.

"Obscene," which is an adjective of similar but somewhat stronger meaning, conveys the idea of something disgusting, filthy, repulsive, or offensive to chastity or delicacy.

"Profane" indicates something unclean, polluted, disrespectful, irreverent, impious, or blasphemous.

The Profane Oaths Act, 1745, directs that a person who shall profanely curse or swear may be prosecuted within 8 days and fined.

Town Police Clauses Act, 1847, s. 28. It is a summary offence for any person to use any profane or obscene language or to sing any profane or obscene song or ballad in any street in any urban district (including any place to which the public have a right of access, also any place of public resort and any unfenced ground adjoining any street in any urban district) where this section is in force by Order (Public Health Acts Amendment Act, 1907, s. 81), to the annoyance of the residents or passengers, and the offender may be arrested without warrant.

Byelaws. In many districts it is an offence, by byelaw, to make use of any indecent language, gesture or conduct.

For indecent behaviour of prostitutes, see "Prostitution," Chap. 10.

Indecent Exhibitions. Any indecent performance or exhibition is a common nuisance and is indictable as a misdemeanour at common law,

Vagrancy Act, 1824, I. 4. Any person wilfully exposing to view in any street, highway or public place any indecent exhibition may be arrested without warrant and convicted as a rogue and vagabond (s. 6).

Town Police Clauses Act, 1847, s. 28. It is a summary offence to exhibit to public view any profane, indecent or obscene representation in any street in any urban district (where the Act is in force), to the annoyance of residents or passengers, and the offender may be arrested without warrant.

Byelaws. In many districts byelaws and regulations deal with indecent shows and entertainments.

Indecent Exposure. It is a public nuisance and therefore indictable as a misdemeanour at common law publicly to expose the naked person.

Such an exposure will be public at common law if made in a place where it is seen by other persons.

wilfully, openly, lewdly and obscenely to expose his person with intent to insult any female, and the offender may be arrested without warrant and convicted as a rogue and a vagabond.

If possible a female who has been so insulted should be called as a witness, but if such female cannot be traced or is not available to give evidence, accused may be convicted of this offence on other evidence proving that he systematically exposed himself with an apparent intent to insult females.

Town Police Clauses Act, 1847, s. 28. It is a summary offence wilfully and indecently to expose the person in any street in any urban district (where the Act is in force), to the annoyance of residents or passengers, and the offender may be arrested without warrant.

For indecent assault on a female, see "Indecent Assault" Chap. 10, and for indecent assault on a male and gross indecency between males, see "Statutory Assaults," Chap. 8, and "Unnatural Crimes" (later).

A public bath or bathing place will be a public and open place as regards offences against decency (Public Health Act, 1936,

Indecent Publications and Advertisements. Any publication, sale, exhibition to public view, or circulation through the post, of anything of an indecent or obscene nature is an offence.

Vagrancy Acts, 1824 (s. 4) and 1838 (s. 2). Every person wilfully exposing to view in any street, highway or public place, or in the window or other part of any shop or building situate in any street, highway or public place, any obscene print, picture, or other indecent exhibitions, may be arrested without warrant and convicted as a rogue and a vagabond.

Town Police Clauses Act, 1847, s. 28. It is an offence for any person publicly to offer for sale or distribution or to exhibit to

public view any profane, indecent or obscene book, paper, print, drawing, painting or representation, in any street in any urban district (where the Act is in force) (for extent of "street" see "Indecent Language"), to the annoyance of the residents or passengers, and the offender may be arrested without warrant. Indecent Advertisements Act, 1889. It is a summary offence to do any of the following acts in connection with any picture or printed or written matter of an indecent or obscene nature :

(1) To affix to or inscribe same on any building, wall, hoarding, gate, fence, post, tree or other thing whatsoever, so as to be visible to any person in any street, public highway or footpath.

(2) To affix or inscribe same on any public urinal.

(3) To deliver, attempt to deliver or exhibit same to any inhabitant or person in any street, highway or footpath.

(4) To throw down same into the area of any house.

(5) To exhibit same to public view in the window of any house or shop.

It is also an offence to give or deliver to any other person any such indecent pictures or writings with intent that same should be so affixed, inscribed, delivered or exhibited.

Any advertisement relating to syphilis, nervous debility or other infirmity arising from or relating to sexual intercourse will be deemed indecent matter within the meaning of this Act, if it is attached to anything so as to be visible to any person in any public highway or footpath or put up in any public urinal or delivered or attempted to be delivered to any person in any public highway or footpath, except where such an advertisement is published by any local or public authority.

Any constable may arrest without warrant any person whom he finds committing any offence against this Act.

Venereal Disease Act, 1917. It is a misdemeanour (which may be dealt with summarily) for any person to advertise in any manner any treatment for venereal disease.

However, this prohibition does not apply to advertisements, recommendations, etc., published by any local or public authority.

Obscene Publications Act, 1959. This Act repealed the Obscene Publications Act, 1857. For the purposes of this Act

(1) an article is obscene if its effect or the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it.

(2) "Article" means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.

(3) A person publishes an article who

(a) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

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(b) in the case of an article containing or embodying matter

paragraph does not apply to a public cinematograph exhibition or to television or sound broadcasting.) (S. 1.)

article is liable to be punished summarily or on indictment. This offence supersedes the common law offence. Summary proceedings may be brought at any time within twelve months of the commission of the offence, and a prosecution on indictment shall not be commenced more than two years after the commission of the offence.

It is a defence if the accused proves that he had not examined the article and had no reasonable cause to suspect that it was obscene. (S. 2.)

formation on oath that there is reasonable ground for suspecting that, in any premises or on any stall or vehicle, obscene articles are, or are from time to time, kept for publication for gain. Such search warrant authorises a constable to enter and search the premises, stall or vehicle, within fourteen days from the date of the warrant, and to seize and remove not only obscene articles, but also documents which relate to a trade or business carried on at the premises (or stall or vehicle) being searched.

Any obscene articles seized shall be brought before a magistrate

In addition to the person summoned, any other person being the

through whose hands they had passed before being seized, shall be entitled to appear to show cause why they should not be forfeited. (S. 3.)

A person shall not be convicted of publishing an obscene article, and an order for forfeiture shall not be made, if it is proved that publication of the article is justified as being for the public good on the ground that it is in the interests of science, literature, art, or learning or of other objects of general concern. The opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act, either to establish or negative the said ground (s. 4).

Customs Consolidation Act, 1876, *a.* 42. The importation into this country of any indecent or obscene prints, paintings,

prohibited and such articles are forfeited.

Judicial Proceedings (Regulation of Reports) Act, 1926. It is

proceedings any indecent matter or detail* the publication of which would be calculated to injure public morals, or any particulars of divorce or marriage judicial proceedings, other than

the mimes, etc., of the parties and witnesses, a concise statement
up, finding and judgment of the Court. Prosecution under the ming

This prohibition does not apply to printing for the use of Courts
tion among the legal and medical professions.

Children and Young Persons Act, 1933. In proceedings arising
out of any offence or conduct contrary to decency or morality
the Court may direct that press reports shall not identify any child

State so permit (s. 49). See " Treatment of Youthful Offenders,"
Chap. 12.

Post Office Act, 1953, s. 11. It is a misdemeanour to enclose
any indecent or obscene print, painting, photograph, book or
card or any indecent or obscene article in any postal packet, or

marks or designs of an indecent, obscene or grossly offensive
character. An offender may be dealt with summarily or on
Indictment. See Prosecution of Offences Regulations. 1946,

to be reported to the Director of Public Prosecutions.

Unnatural Crimes. Sexual Offences Act, 1956, s. 12. It is
felony for a person to commit buggery with another person or
with an animal.

See s. 39 (in Chap. X) as regards the evidence, and this also
affects ss. 15 and 16 which follow here.

This s. 39 does not apply in the case of this section except on a
charge of the offence with a person under 17. And a person shall be
presumed to be under 17 unless the contrary is proved if it is so
stated in the charge of indictment and the person appears to
the court to have been so at the time of the offence.

Section 13. It is an offence for a man to commit an act of
gross indecency with another man, whether in public or private,

indecency with another man, or to procure the commission by a
man of an act of gross indecency with another man.

Section 16. It is an offence for a person to assault another
person with intent to commit buggery.

However s. 39 of this Act (see above) as to the evidence of the
husband or wife of the accused does not apply as regards this
section except on a charge of an assault (apparently this assault)
on a person under 17 (who by this section shall be presumed to
be under 17, unless the contrary is proved (see under s. 12 above)).

Section 15. It is an offence to make an indecent assault on a
man.

A boy under 16 cannot in law give any consent which prevents an act being such an assault.

A defective cannot in law consent to such an act but a person is only to be treated as guilty of an indecent assault on a defective by reason of that incapacity to consent if such person knew or had reason to suspect him to be a defective.

However s. 39 of this Act (evidence of wife or husband) as noted in Chap. 10, does not apply as regards this section except on a charge of indecent assault on a boy under 17 (or apparently under 17 unless the contrary is proved).

This offence could be dealt with summarily (see 2nd Sched.).

Section 32. It is an offence for a man persistently to solicit or importune in a public place for immoral purposes.

This can be prosecuted on indictment or summarily (see 2nd Sched.).

Indecency with Children Act, 1960. It is an offence for any person to commit an act of gross indecency with or towards a child under the age of fourteen, or to incite a child under that age to such an act with him or another (S. 1 (1)).

On a charge of such an offence the wife or husband of an accused person is competent to give evidence at all stages of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with another person : but the wife or husband cannot be compelled either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; and the failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

The foregoing paragraph does not affect s. 1 of the Criminal

accused can be called as a witness at common law without the consent of the accused. (S. 2.)

Publishing any advertisement of any article in terms calculated to lead to its use for abortion is a summary offence under ss. 9 and 10 of the Pharmacy and Medicines Act, 1941, and the consent of the Attorney-General is required for a prosecution.

Any offence of abortion must be reported to the Director of Public Prosecutions (see Appendix III).

Child Destruction. This felony is committed where a person, with intent to destroy the life of a child capable of being born alive, by any wilful act causes the child to die before it has an existence independent of its mother. Provided that a person

such act was not done to preserve the life of the mother. Evidence of pregnancy for twenty-eight weeks or more shall be *prima facie* proof that the child was capable of being born alive.

If tried for murder, manslaughter, infanticide or abortion, the accused may be convicted of child destruction. If tried for child destruction there may be a conviction for abortion or concealment of birth (Infant Life (Preservation) Act, 1929).

Infanticide. Under the Infanticide Act, 1938, where a woman by any wilful act or omission causes the death of her child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or the effect of lactation, she shall be guilty of the felony of infanticide which is punishable as manslaughter.

If a woman is tried for the murder of her child under the age of 12 months the jury may return a verdict of murder or of infanticide.

On the indictment for the murder of a child the jury may return a verdict of manslaughter or of guilty but insane or of concealment of birth (which verdict may be given on an indictment for infanticide).

Under s. 1 of the Children and Young Persons Act, 1933, a person of or over 16 indicted for infanticide or manslaughter of a person under 16 may be found guilty of cruelty under the Act.

Concealment of Birth is a misdemeanour and is committed by every person who, when a child has been born (alive or dead), endeavours to conceal the birth by any secret disposition of the dead body of the child. Any person tried for the murder of any such child may be convicted of endeavouring to conceal the birth thereof (Offences against the Person Act, 1861, s. 60).

As evidence is required to prove that a child has been born, the mother should be examined as soon as possible by a doctor, but only if she consents, for if she does not consent such an examination would amount to an assault upon her. The dead body of the child should be found and identified. However,

indicted for murder, was convicted of concealment of birth to ascertain whether the child was born alive, and, if so, by what means it died. Denial of the birth of the child is not sufficient,

Any " secret disposition " is sufficient, and every person who uses any such endeavours to conceal the birth is liable, and where another person may be liable it is immaterial whether there be

Abandoning Child. It is a misdemeanour unlawfully to abandon or expose any child under the age of two years whereby its life is endangered or its health is or is likely to be permanently injured (Offences against the Person Act, 1861, s. 27). This offence

(C.J.A. Act 1962, 3rd Sched.).

Children and Young Persons. The main statutes dealing with children and young persons and persons under 21 are the Children and Young Persons Act, 1932, the Children and Young Persons Act, 1933, the Children and Young Persons Act, 1956, the Children and Young Persons Act, 1938, the Education Acts, 1944 and 1946, the Criminal Justice, Act, 1948, the Children Act, 1948, the Children and Young Persons (Amendment) Act, 1952, the Children Act, 1958 and the Indecency with Children Act, 1960.

Part I arranges for the prevention of cruelty and gives the offences given in the 1st Schedule to the Act.

Part II deals with employment, entertainments, dangerous performances, and employment abroad.

Part III gives the procedure as regards proceedings in connection with children and young persons, juvenile courts and juvenile

persons with amendments by the 1956 Act.

Part V gives control over voluntary homes.

Part VI contains various supplementary provisions.

person who has attained the age of fourteen years and is under the age of seventeen years (1933 Act, s. 107 and 1932 Act, s. 70; see also s. 20 M.C. Act, 1952). An " adult " is a person who is of the age of seventeen years or upwards (M.C. Act, 1952, s. 19).

" Place of Safety " means any remand home or police station or any home provided by a local authority (C. Act. 1948, 3rd

Sched.), or any hospital, surgery or any other suitable place the occupier of which *is* willing temporarily to receive an infant, child or young person (1933 Act, s. 107).

" Street " includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not (1933 Act, 8. 107).

" Public Place " includes any public park, garden, sea beach or railway station and any ground to which the public for the time being have or are permitted to have access whether on payment or otherwise (1933 Act, 8. 107).

" Guardian " includes any person who, in the opinion of the Court, has for the time being the charge of or control over the child or young person (1933 Act, s. 107 and M.C. Act, 1952, s. 126).

Where the age of any person at any time is material for the purposes of the Act, his age at the material time shall be deemed to be that which appears to the Court, after considering any available evidence, to have been his age at that time (M.C. Act, 1952, 8. 126).

Where any powers or duties are conferred by Part II of the 1933 Act on local authorities, the " local authority " shall be the local education authority (1933 Act, a. 96, as amended by the Education Act, 1944, 8th Sched, and C. Act, 1948, 3rd Sched.).

An education authority may institute proceedings for any offence under these Acts (1933 Act, a. 98, and C. Act, 1948, 3rd Sched.).

The procedure in Courts with respect to juveniles is regulated by the Summary Jurisdiction (Children and Young Persons) Rules, 1933, 1938, 1950, 1952 and 1953.

If a juvenile is charged with an offence and is not defended and he makes assertions, the Juvenile Court may question him to clear up such assertions. If a Juvenile Court finds a juvenile guilty of an offence or decides that he needs care or protection, information regarding him shall be obtained and any written report from a probation officer, local authority or doctor may be received without being read aloud provided that the substance of the report is told to the juvenile and his parent or guardian (if present) and that further evidence may be given, and the Court may require the parent or guardian of the juvenile to withdraw from the Court.

When a Court places a juvenile under the supervision of a probation officer or other person it shall give the juvenile a written notice explaining the effect of the order of the Court.

The term " juvenile " is herein used to indicate a person under 17 and so includes " children " and " young persons."

Child Protection. The Children Act, 1956, make* fre<h provision for the protection of children living away from their

parents. Part I (ss. 1-17) deals with the supervision of " foster " children by local authorities, and supersedes ss. 206-220 of the Public Health Act, 1936, and ss. 35-37 of the Children Act, 1948.

It is the duty of local authorities to ensure the well-being of

limit of compulsory school age whose care and maintenance are undertaken for reward for more than one month by a person who is not a relative or guardian of his, but not one whose well-being is already the responsibility of some competent authority (s. 2).

Persons maintaining " foster " children must notify the local authority and provide particulars such as name, age, place of birth etc. (s. 3). The local authority has power to inspect premises, impose conditions or prohibit the keeping of " foster " children

section 4 may appeal to a juvenile court (s. 5). Certain disqualifications for keeping " foster " children are detailed in section 6.

surroundings (s. 7).

Under s. 40 of C. & Y.P. Act, 1933, a warrant authorising the search for a child may be issued on suspicion that unnecessary suffering is being caused to a child. Any refusal to allow the visiting of a " foster " child gives reasonable ground for such a

Failure to make any of the notifications required or making a false or misleading notice; refusing to allow the visiting of any " foster " child by a duly authorised officer; failure to comply with any requirements imposed by a local authority; maintaining a " foster " child in contravention of s. 6 or refusing to comply with an order for the removal of any " foster " child; or obstruct

offences punishable by imprisonment up to 6 months or a fine up to /100 or both (s. 14).

Under the Nurseries and Child Minders Regulation Act, 1948, any person who for reward receives in his home more than two

for the day or a substantial part of the day or for longer period not exceeding 6 days, commits a summary offence unless registered with the local health authority (ss. 1 and 4). The occupier of any premises (other than premises wholly or mainly used as a private

received to be looked after for the day or a substantial part of a day or for any longer period not exceeding 6 days, commits a

health authority (ss. 1 and 4). The local health authority may register fit persons and fit premises and impose requirements (*t.* 2). It will issue certificates of registration (*a.* 3) and may cancel same for cause (*a.* 5). It will authorise inspection of premises and children, and if admission is refused a justice may issue a warrant authorising entry (*a.* 7). The local health authority

apply to hospitals, schools and approved nursery schools and Institutions (s. 8).

The Children Act, 1948, makes further provisions for the welfare to take into their care a child under 17 who has no parents or guardian or who is abandoned or lost or whose parents or guardian are prevented from properly maintaining him and who requires

of such a child, the local authority may, by resolution, assume has no guardian or if his parents or guardian have abandoned him or are incapable or unfit and consent or if a juvenile court so order if no consent is given (s. 2).

to run away or to harbour such a runaway (s. 3). The local authority shall be a " fit person " to whom a court may commit a child or young person (s. 5). The parent of a child under 16 in the care of the local authority shall keep the authority informed of his address ; if he does not he commits a summary offence (s. 10). The local authority may board out a child in their care or maintain him in a home (provided by the authority under s. 15) or place him

premises under their control (s. 13). A local authority may provide accommodation for the temporary reception of children (s. 15). Such accommodation may be made available for children under such a place will be known as a " special reception centre." Such children may be committed there by the court or sent there by the police (C. and Y.P. Amendment Act, 1952. s. 3). The local authority may procure or assist the emigration of any child in their care, with the consent of the Secretary of State (s. 17). Sections 23- 26 deal with contributions payable to the local

shall establish a children's committee to carry out their functions adoption of children, unless exempted by the Secretary of State (ss. 39, 40). A local authority shall appoint a children's officer and

Children's Homes Regs., 1951, deal with these homes. S. 103 of the C. and Y.P. Act, 1933, authorised the Secretary of State to inspectors are authorised to enter all places referred to in these

Acts, on production of their written authority and any obstruction of these inspectors will be a summary offence (s. 54).

"Child" in the Children Act, 1948, means generally a person under 18, "guardian" means a person so appointed by deed or will or by a court, "parent" of an illegitimate child means his mother and a person who has adopted a child is his "parent" under the Act (s. 59).

Cruelty to Children and Young Persons. Part I of the Children and Young Persons Act, 1933, deals with cruelty to juveniles and with certain other similar offences.

The offences under Part I are as follows :

(1) *Cruelty*. That is, any person who has attained the age of sixteen years who has the custody, charge or care of *any*

abandoning or exposing such juvenile or causing or procuring same to be done, in a manner likely to cause him unnecessary suffering or injury to health.

It is a misdemeanour punishable on indictment or summarily by fine and (or) imprisonment not exceeding six months.

Failure to provide adequate food, clothing, medical aid or lodging for such juvenile or failure to take steps to get same provided under the National Assistance Act, 1948, will be deemed to be "neglect" likely to cause injury to health under this section, on the part of the person legally liable to maintain such juvenile.

If the death of an infant under three was caused by suffocation (not due to disease or foreign body in the throat) while in bed with a person of sixteen or over, who had gone to bed under the influence of drink, that person will be deemed to have neglected the infant in a manner likely to cause injury to health (s. 1).

If actual suffering or injury or its likelihood is prevented by the action of another person or if the juvenile dies, the responsible person may be convicted under this section.

If the person responsible is indicted for infanticide or manslaughter, the jury may find him guilty of an offence under this section.

If it is proved that the person convicted was in any way interested in any money accruable or payable on the death of the juvenile and knew it, the punishment may be heavier.

Nothing in this section shall affect the right of any parent, teacher or other person in lawful control or charge to administer punishment to a child or young person (s. 1).

Assaults on children and young persons may also be dealt with as assaults. See Chap. 8, "Statutory Assaults."

(2) *Brothels*. Any person having the custody, charge or care of a person of the age of four and under sixteen, allowing such

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juvenile to reside in or frequent a brothel. Misdemeanour, and is also punishable summarily by one and (or) imprisonment up to six months (s. 3). See Chap. 10, "Brothels."

(3) *Begging*. Any person causing or procuring or when having the custody, charge or care of such juvenile, allowing a person under sixteen to be in any street, premises or place for the purpose of begging or getting alms in any manner. Summary offence (s. 4).

If a person singing etc. in a public place has with him a child lent or hired to him, the child shall be deemed to be there for the getting of alms (s. 4).

(4) *Intoxicant*. It is a summary offence for any person to liquor, except on doctor's orders or in case of sickness or other

(5) *Tobacco or cigarette papers*. Sale to persons under sixteen is a summary offence (s. 7). See "Smoking by Juveniles" later.

(6) *Pawnbrokers*. **Must not take pledges from persons under fourteen (s. 8).** See Chap. 31, "Pawnbrokers."

(7) *Old Metal*. Dealers must not purchase old metal from persons under sixteen (s. 9). See Chap. 31, "Dealers in Old Metals."

(8) *Vagrants and Children*. It is a summary offence for a person habitually to wander from place to place and take with him any child of five or more or any young person still liable to compulsory schooling, unless he can prove that the child or young person is not, by so "wandering" prevented from receiving efficient full time education. Any constable, on reasonable grounds of suspicion, may arrest without warrant such person and take the child or young person to a place of safety (s. 10, and Education Act, 1944, 8th Sched.).

(9) *Unprotected Fire*. Where any person of sixteen or over who has the custody, charge or care of any child under twelve, allows such child to be in any room containing an open fire grate or any heating appliance liable to cause injury by contact not sufficiently protected to guard against the risk, without taking reasonable precautions against the risk of the child being burnt or scalded and by reason thereof the child is killed or suffers serious injury. Summary offence (s. 11 and s. 8 of the C. and Y.P. (Amendment) Act, 1952).

See also the Heating Appliances (Fireguards) Act, 1952.

(10) *Entertainments*. Failing to provide for the safety of children at entertainments is a summary offence (s. 12). See Chap. 37. "Ingress and Egress."

As regards juveniles and licensed premises see Licensing Act, 1953, ss. 126 and 127, and Licensing Act, 1961, s. 21, Chap. 38.

(11) Under s. 56 of the Offences against the Person Act, 1861, it is felony to unlawfully, by force or fraud, lead or take away or decoy or entice away or detain any child under 14, with intent to deprive the parent or lawful custodian of the possession of such child, or with intent to steal any article on such child, or with any such intent to receive or harbour any such child knowing it has been so abducted, except where the abductor has claimed a right to the possession of such child or is the mother or has claimed to be the father of such illegitimate child.

Custody, charge or care of a child or young person :

him is presumed to have the custody of him, and desertion by the father does not in itself end his custody.

A person to whose charge he is committed by any person who has the custody of him, is presumed to have charge of him.

sumed to have care of him (s. 17).

Arrest, Search Warrant and Procedure. Any constable may arrest without warrant :

(1) Any person who within his view commits any of the offences in the First Schedule to the Act, if he does not know and cannot ascertain his name and residence.

(2) Any person who has committed or whom he has reason to believe to have committed, any of the offences in the First Schedule to the Act, if he has reasonable ground for believing such person will abscond or if he does not know and cannot ascertain his name and address (a. 13).

First Schedule to Act of 1933 as amended. This schedule men-

Murder, manslaughter, infanticide. (The reference to the murder or manslaughter of a child or young person applies also to aiding, abetting, counselling or procuring the suicide of a child or young person (Suicide Act, 1961)).

exposing a child under two); s. 56 (kidnapping child under fourteen); s. 5 (manslaughter); s. 42 (assault); s. 43 (aggravated assault on boy under fourteen or female).

Children and Young Persons Act, 1933, s. 1 (cruelty to Juvenile under sixteen); s. 3 (allowing juvenile of four and under sixteen to be in a brothel) ; s. 4 (causing or allowing juvenile under sixteen to be used for begging) ; s. 11 and s. 8, 1952 Act

or allowing juvenile under sixteen to take part in public dangerous performance) and

Sexual Offences Act, 1956, offences under ss. 2 to 7, 10 to 16, 19, 20, 22 to 26, and 28, and any attempt to commit offences under ss. 2, 5, 6, 7, 10, 11, 12, 22, 23. Section 99 (2) of the C. and Y.P. Act, 1933, shall apply where necessary. Offences against the Indecency with Children Act, 1960.

After such an arrest without warrant the prisoner shall be released on bail at the police station, unless his release would tend to defeat the ends of justice or cause danger to the juvenile

A constable or any person authorised by a Justice may take to a place of safety any juvenile in respect of whom any of the First Schedule offences has been or is believed to have been committed or who is about to be brought to Court as needing care or protection (s. 67).

Search Warrant. A Justice may issue a warrant authorising any constable named therein to enter, if need be by force, any place specified in the warrant, and either to search for and remove to a place of safety any child or young person if it is found that he has been or is being assaulted, ill treated or neglected or the subject of any First Schedule offence, or to remove a juvenile to a place of safety. The juvenile need not be named and the warrant may direct the arrest of any person accused.

unless the Justice otherwise directs and the Justice may direct the attendance of a doctor (9. 40).

Procedure. The same information or summons may charge any of the above First Schedule offences in respect to two or more juveniles. The same information or summons may also charge a person as having the care, custody or charge, and charge him

together or separately. The dates of the acts making up a continuous offence need not be specified. For summary conviction

acts making up the offence may be taken (s. 14).

The unsworn evidence of a child of tender years in offence cases intelligent and understands the duty of speaking the truth, but such evidence must be corroborated (s. 38).

juvenile at the hearing of the case may be dispensed with if the Court does not consider it essential (a. 41).

In a First Schedule offence case, if the attendance of the injured juvenile would involve serious danger to his life or health,

and a doctor gives evidence to that effect, a Justice may take the juvenile's deposition and send it to the Court (*a.* 42). Such a

juvenile's condition, provided that notice of the intention to take it had been served on the accused and that he or his lawyer had (or might have had if he had chosen to be present) an opportunity of cross examining the juvenile on his deposition (*s.* 43).

Smoking by Juveniles. S. 7 of the Children and Young Persons Act, 1933, deals with persons under the age of sixteen years smoking tobacco (which includes cigarettes).

It is a summary offence to sell to anyone apparently under the age of sixteen years, any tobacco or cigarette papers, whether for his own use or not.

However, sale of tobacco other than cigarettes shall not be an offence if the sale is for the use of the juvenile buyer.

It is the duty of a constable and of a park keeper in uniform to seize tobacco or cigarette papers in the possession of any person apparently under the age of sixteen whom he finds smoking in any street or public place (including any ground to which the

It is not an offence to sell to, and there is no power of seizure in the case of :

- (1) Boy messengers in uniform in the course of their employment ;
- (2) Persons employed by tobacconists for the purpose of their business.

On proof that any automatic machine for the sale of tobacco kept on any premises is being extensively used by persons apparently under sixteen, a Magistrates' Court may order the owner of the machine or the occupier of the place where the machine is kept to take specified precautions to prevent the practice or if necessary to remove the machine.

Care or Protection of Juveniles. Children and Young Persons (Care and Protection) Act, 1939. A child (under 14) or young person (under 17) needs care or protection

- (1) has no parent or guardian or a parent or guardian unfit

moral danger (which will include being destitute, wandering without abode and means, begging) or is beyond control or is ill treated or neglected in a manner likely to cause him unnecessary suffering or injury to health ; or

- (2) has been subject to an offence mentioned in the First Schedule to the Act or is a member of a household where any such offence (including incest or attempted incest; Sexual Offences Act, 1956, 3rd Sched.) has been committed and in such case requires care or protection; or

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(3) is a person liable to compulsory education prevented from receiving education by being taken wandering.

(See "Vagrants and Children," 8. 10 above.)

S. 62. Any local authority, constable, or person or society duly authorised by the Secretary of State (the N.S.P.C.C. will be 10 authorised), who has reasonable grounds for believing that a person under seventeen needs care or protection (as above described), may bring him before a Juvenile Court. (It will be the duty of

case. s. 2, 1952 Act). (He may be brought on summons or on

on his parent or guardian, S.J. (Children and Young Persons) Rules, 1933, 1938, 1950, 1952, and 1953.) Also any Court which has convicted a person for an offence mentioned in the 1st Schedule or under s. 10 for wandering and thereby preventing education, may also deal with the juvenile or direct him to be brought before a Juvenile Court and the local authority shall do so (s. 63).

approved school (see later) or commit him to the care of a fit

and guardianship or (and) place him under the supervision of a probation officer or some other named person for up to three years (s. 62) and may add a requirement as to his residence or mental treatment provided that in the case of a young person he consents to it (C.J. Act. 1948, *i.* 74).

S. 64, as amended by 1952 Act. If the parent or guardian proves he is unable to control a person under seventeen and consents to the order, a Juvenile Court may send the juvenile to an approved school or place him under the supervision (with similar requirement as to residence or mental treatment, C.J. Act, 1948, a. 74) of a probation officer or other named person for up to three years or commit him to the care of a fit person, (*a.* 1, 1938 Act). S. 65 has been amended to allow a local authority to bring a refractory child or young person before the Juvenile Court.

Under the Mental Health Act, 1959, s. 61, additional powers are

brought before the court under ss. 62 and 64 of the C. & Y.P. Act, 1933.

S. 66. Where a juvenile has been ordered to be under super-

brought before a juvenile court and may be sent to an approved school or committed to the care of a fit person.

If a court considers that a young person brought before them under any of the preceding conditions (ss. 62-66, 1933 Act) needs inquiry into his physical or mental condition, it may send him to

S. 67. A constable or any person authorised by any Court or Justice may take to a place of safety (where he may be detained until he can be brought before a Juvenile Court) any person under

seventeen in respect of whom an offence under the First Schedule to the Act, has been or is believed to have been committed or who is about to be brought before a Juvenile Court as needing 'care or protection or refractory. The Court has power to make an interim order (remand) for his detention in a place of safety or for his committal to the care of a fit person, for periods each not exceeding twenty-eight days, until the Court is in a position to decide what to do with the juvenile. See also s. 6 of 1938 Act and s. 3 and Sched., 1952 Act, as to further interim orders.

If the court proposes to make such an interim order but the person is too unruly or depraved for a remand home, the court may send him to a suitable available remand centre, and if while in a remand home on interim order, he proves too unruly or depraved a court may send him to a suitable available remand centre (C.J. Act, 1948.a. 75).

Education. The Education Act, 1944, has made several pulsory school age is now between 5 years and 15 years (s. 35). The parent or guardian or person having the actual custody is bound to cause such person to receive efficient full time education (s. 36). For non-attendance at school the local Education Authority may serve a school attendance order (s. 37). The parent will be guilty of an offence if his "child" does not attend school regularly (s. 39). School attendance may be enforced by fine and/or imprisonment and the Court may direct that the "child" be brought before a Juvenile Court which may deal with him under a. 62 of the C. and Y. P. Act, 1933, as needing care or protection (a. 40). "Child" here means a person not over compulsory school

Employment of Juveniles. Children and Young Persons

and young persons. S. 18 imposes restrictions on the employment of children, and s. 30 directs that any person assisting in any trade or occupation carried on for profit shall be deemed to be employed although he receives no reward for his labour.

For the purposes of byelaws made by the local authority under Part II of this 1933 Act the expression "child" shall have the same meaning as it has for the purposes of the said Part II (Education Act, 1944,a. 120 (5)). Also for the purposes of any enactment relating to the employment of children and young persons any person not over compulsory school age shall be deemed to be a child within the meaning of that enactment (Education Act, 1944, s. 58).

However, a chorister taking part in religious services or practices, whether paid or not, shall not be deemed to be employed fa. 30) and a child of twelve or over broadcasting for the B.B.C. and persons in approved schools are exempted (s. 29).

The general restrictions are as follows :

(1) No child shall be employed until his age is two years less than the age at which compulsory schooling ceases (viz. thirteen years). However, byelaws may allow the parent or guardian to employ a child in light agricultural or horticultural work (s. 18).

(2) No child shall be employed before the close of his day's school hours. However, byelaws may allow a child to be employed for one hour before his day's school hour (s. 18).

(3) No child shall be employed before 6 A. M. or after 8 P. M. nor for more than two hours on any of his school days. However, this restriction does not apply to a child of twelve or over, duly licensed to take part in an entertainment (see later) (s. 18).

(4) No child shall be employed on any Sunday for more than two hours (s. 18).

(5) No child shall be employed to lift, carry, or move any thing so heavy as to be likely to cause injury to him (s. 18).

A local authority (the Education Authority, s. 9fi) may make byelaws restricting still further the employment of children (s. 18, and Education Act, 1944, 8th Sched.).

A local authority after approval by Parliament may make byelaws dealing with the employment of persons under eighteen other than children (s. 19). The Young Persons (Employment) Act, 1938, regulates the hours of employment of persons under 18 in certain occupations. See also Shops Act, 1950.

Street Trading. No person under sixteen shall engage or be employed in street trading, but byelaws may allow persons of fourteen up to sixteen to be so employed by their parents.

A local authority may make byelaws regulating or prohibiting street trading by persons under eighteen (s. 20). A person under eighteen who engages in street trading in contravention of above, is liable to fine on summary conviction (s. 21).

" Street trading " includes hawking of newspapers, matches, flowers and other articles, playing, singing or performing
fo;

profit, shoe blacking and other like occupations carried on in streets or public places (s. 30).

If a person is employed in contravention of any of the above restrictions, his employer (unless he proves he used all due diligence to observe the law) and any person (other than the employee) to whose act or default the contravention is attributable, are liable to fine on summary conviction (s. 21). For the right of entry to make enquiries see " Powers of Entry (Employment) " later.

Entertainments by Children. Children and Young Persons Act, 1933, Part II, s. 22. A child (under fourteen) shall not, unless duly licensed, take part in any entertainment in connection with

which any charge, whether for admission or not, is made to any of the audience.

However a licence shall not be necessary (apart from any restrictions on employment) if the child has not taken part in any such entertainments on more than six occasions during the preceding six months and if the net proceeds do not go to the private profit of the promoters.

Provided, however, that this exception does not apply on liquor licensed premises unless either the premises are also licensed for stage plays or music, singing or dancing, or two Justices have in writing specially authorised the child to take part.

Causing or procuring or being the parent or guardian allowing a child to take part in an entertainment in contravention of above, is a summary offence.

The local authority (the Education Authority, s. 96) may grant a licence for a child of twelve or upwards, who is residing in their area, to take part in specified entertainments on week days, provided the child is fit to take part and will be properly treated. See the Employment of Children in Entertainments

The licensee shall give seven days' notice to the local authority of any area in which the entertainment is to take place and that authority has power to vary, extend or revoke the licence, subject to an appeal to the Board of Education.

For right of entry to make enquiries, see " Powers of Entry (Employment) " later.

Dangerous Performances by Juveniles. Children and Young Persons Act, 1933, Part II.

(1) No person under sixteen shall take part in any public

or procuring or being the parent or guardian allowing him to do so is a summary offence which may be prosecuted only by or with the authority of the Chief Officer of Police (s. 23) :

(2) No person under twelve shall be trained to take part in performances of a dangerous nature (including acrobatic and contortionist work, s. 30) ; and

(3) No person under sixteen shall be trained to take part in such performances except on licence (s. 24).

Causing or procuring or being the parent or guardian allowing any such training except on licence is a summary offence punishable by fine (s. 24).

A petty sessional court may grant a licence for a person of twelve and under sixteen years to be so trained. The applicant for the licence shall give seven days' notice to the Chief Officer of Police of the district where the juvenile is to be trained, and be may oppose the grant. The licence shall specify the place or

places where such person is to be trained and conditions for his protection may be included. It may be revoked by the Court on cause shown by any person (s. 24).

For the right of entry to make enquiries, see " Powers of Entry (Employment) " later.

Powers of Entry (Employment). Children and Young Persons Act, 1933, s. 28. On reasonable cause to believe that the provisions of Part II as to employment, entertainments and dangerous performances or of any byelaw made thereunder, are being contravened with respect to any person, the local authority or any constable may obtain from a Justice a written order giving power to enter at any reasonable time within forty-eight hours of the making of the order, any place in or in connection with which such person is or is believed to be employed, trained, etc., and to make enquiries therein with respect to such person. If a licence is in existence in respect to entertainments or dangerous performances, any authorised officer of the local authority or any constable may enter the place specified and make enquiries therein as to the person to whom the licence relates. It is a summary

or answer falsely any enquiry thus authorised.

Employment Abroad. Restrictions. The Children and Young Persons Act, Part II, s. 25, directs that no person shall cause or procure or, having the custody charge or care* of him,

or being exhibited, for profit :

(1) Any person under fourteen.

(2) Any person who is fourteen years of age or upwards and under eighteen, unless a licence has been granted for the purpose. (" Abroad " means outside Great Britain and Ireland, s. 30).

These restrictions do not apply to a person only temporarily resident in Great Britain and Ireland (s. 25).

the district in which the juvenile resides, application for a licence may be made to the Chief Magistrate or Magistrate at Bow Street, London, or to a stipendiary magistrate duly authorised under the section. Conditions may be attached and any such licence may be revoked, varied or extended (s. 25).

Contravention of the above is a summary offence, and if a person procured any such juvenile to go abroad by false pretence or false representation he is liable on indictment to two years' imprisonment (s. 26).

A constable or any person authorised by a Justice may take to a place of safety any juvenile under seventeen who there is reason to believe is about to go abroad in contravention of the above restrictions (s. 26).

Treatment of Youthful Offenders. The Children and Young Persons Act, 1933, and the Criminal Justice Act, 1948, make special provision for the treatment of youthful offenders who are children or young persons (under 17) or are under 21.

After arrest with or without warrant if a youthful offender under 17 cannot be brought forthwith before a Magistrates' Court,

association with criminals or prostitutes or unless it is considered that his release would defeat the ends of justice (1933 Act, s. 32) and if detained and under 12 he may be sent to a special reception centre instead of to a remand home (1952 Act, Sched.). See "Bail by Police," Chap. 5.

If such prisoner is not so released after arrest and is not sent to

to do so, or that he is so unruly that he cannot be safely so

Where a court (or justice) remands or commits for trial or sentence a person under 21 charged with or convicted of an

special reception centre (1952 Act, Sched.), if not he should be sent to a remand home if under 14, to a remand home if not less than 14 but under 17 unless too unruly or depraved, and to a remand

unruly or depraved for a remand home (C.J. Act, 1948, s. 27 (1)).

Where a person (16-21) is committed or remanded by a magistrates' court with a view to Borstal training, he should be sent to a suitable available remand centre and if not, to prison, but if he is under 17 he may be sent to a remand home unless he is too unruly or depraved (M.C. Act, 1952, s. 28). Where an offender liable to imprisonment and not less than 14 but under 17 is remanded in custody for inquiry into his physical or mental condition, the court may send him to a suitable remand centre (if available) instead of to a remand home (M.C. Act, 1952, s. 26).

Any court (or justice) may order the transfer of a person from a remand home to another remand home, or in the case of a person not less than 14 who is too unruly or depraved for a remand home,

(C.J. Act, 1948, s. 27 (5)).

If not less than 14, a person in custody charged with an offence

(M.C. Act, 1952, s. 40). See "Finger Prints," Chap. 5.

When a juvenile has been arrested or taken to a place of safety, guardian to attend the Court. If a juvenile is brought for any

reason before a Court, the parent or guardian if available should be required to attend the Court unless the Court thinks it would be unreasonable (1933 Act, s. 34). His attendance may be enforced by summons or warrant (S.J. (Children and Young Persons) Kulet, 1933, 1938, 1950, 1952 and 1953).

When a child or young person is to be brought before a justice or justices charged with an offence or needing care or protection notification of the date and reason for bringing such juvenile, shall be given forthwith to :

(1) A probation officer for the petty sessional division, and

(2) The local authority for the district in which the juvenile is resilient (or of the place of the offence, etc., if residence is not known).

The local authority except in cases of a trivial nature or unless it is arranged that a probation officer will do so, shall provide the Court with information as to the home, school, health and character of the juvenile.

This notification shall be given by the police where the juvenile is charged with an offence, and in any other case (i.e. care or protection) by the person bringing the juvenile before the Court (1933 Act, s. 35 and 1952 Act. Sched.).

While detained in a police station or being conveyed to or from a Court or while waiting before or after attendance at Court, a juvenile shall be prevented from associating with an adult (not being a relative) charged with any offence other than the offence with which the juvenile is jointly charged. If a girl she shall be under the care of a woman (1933 Act, s. 31).

In the case of any proceedings arising out of any offence or conduct contrary to decency or morality, the Court may direct that no newspaper report shall give the picture, name, address or school of any particulars calculated to identify any child or young person concerned in the proceedings, either as accused, prosecutor or witness. Breach of any such direction of the Court is punishable summarily by fine (1933 Act, s. 39).

Unless the Court or the Secretary of State by order permit, no newspaper report of any proceedings in a Juvenile Court shall give the picture, name, address, school or any particulars calculated to identify any child or young person concerned in the proceedings as accused, prosecutor or witness. Any contravention is punishable summarily by fine (1933 Act, s. 49).

Charges against children and young persons (and also applications for orders or licences relating to them) shall be heard by Juvenile Courts. However, this does not apply to a joint charge against a person under seventeen and a person of seventeen or over, nor does it apply when a person under seventeen is charged and another person of seventeen or upwards is charged with aiding, abetting, causing, procuring, allowing or permitting that offence, and a Magistrates' Court may continue dealing with a case

even though it transpires in the course of the proceedings that the person concerned is a person under seventeen (1933 Act, s. 4fi).

A Juvenile Court may deal with a charge or an application relating to a person believed to be a child or young person although it is discovered that the person is not a juvenile (1933 Act, s. 48 (1)).

Any Justice or Justices may entertain an application for bail

defendant is (1933 Act, s. 46 (2)).

If a juvenile is remanded by a Juvenile Court for information to be obtained concerning him, the remand may be for periods -

Any Court by or before which a child or young person is found guilty of an offence other than homicide, may remit the case to a

The Summary Jurisdiction (Children and Young Person) Rules, 1933, 1938, 1950, 1952 and 1953, deal with the procedure in Court respecting juvenile offenders and juveniles in need of care or protection See Stone's Justices' Manual.

Punishment of Youthful Offenders. It shall be conclusively presumed that no child under eight can be guilty of any offence (C. and Y.P. Act. s. 50). A person of the age of eight and under

for rape or carnal knowledge) if it is proved that he had sufficient discretion and capacity to know what he was doing was wrong.

Such a child (8 up to 14) shall be dealt with by a Juvenile Court for any offence other than homicide, but a Court may commit him for trial for an indictable offence if a person of fourteen or over is charged jointly with him (M.C. Act, 1952, s. 21).

He may not be fined more than £10 (C.J. Act, 1961, s. 8).

ment but he may be committed for up to a month to a remand home (1933 Act, s. 54). See later as to sending to an approved school.

A person of fourteen and upwards is liable for his offences.

A young person (14-17) may be dealt with summarily, with his consent, at any time, for any indictable offence except homicide.

trates' court shall not impose imprisonment on him (M.C. Act, 1952, s. 107), but if he is 15 or over, imprisonment may be ordered by Assizes or Quarter Sessions (C.J. Act, 1948, s. 17 (1)). Instead of imprisonment he may be committed to a remand home for up to one month (C. and Y.P. Act, 1933, s. 54) or he may be sent to a suitable detention centre if one is available (C.J. Act, 1948, s. 18).

If a child or young person is convicted on indictment of attempt

specified period and in such case he will be detained as directed by the Secretary of State (C. and Y.P. Act, 1933, s. 53).

If a child or young person is charged with any offence for which

fine, damages or costs may be imposed, the court may impose same and may in any case and shall if the offender is a child order that it should be paid by the parent or guardian, unless the parent or guardian cannot be found or has not conduced to the commission of the offence and if a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour (1933 Act, s. 55). See also C.J. Act, 1948, s. 11, and C.J. Act, 1961, s. 8.

A child or young person found guilty of an offence punishable with imprisonment in the case of an adult, may be sent by a court to an approved school or committed to the care of a fit person (1933 Act, s. 57).

The words " conviction " and " sentence " shall not be used in relation to children and young persons dealt with summarily and are to be replaced by " found guilty " and " order " (1933

person shall be regarded as a conviction of felony for the purpose of any disqualification attaching to felony (1933 Act, s. 51).

No court (or justice) shall impose imprisonment on a person under 21, unless the court is of opinion that no other method of dealing with him is appropriate (C.J. Act, 1948, s. 17 (2)). A magistrates' court shall not pass a sentence of imprisonment on a first offender of or over 21 unless the court is of opinion that no other method of dealing with him is appropriate (First Offenders Act, 1958, s. 1).

Act) to impose imprisonment on a person under 21 but not less than 10 or to deal with him for breach of a probation order, the court may order him to attend at an available attendance centre (C.J. Act, 1948, s. 19). See later.

A court (or justice) instead of imposing imprisonment on « person under 21 but not less than 14, may order him to be detained in a detention centre (C.J. Act, 1948, s. 18). See later.

A person under 21 but not less than 16 who is convicted of an

(C.J Act 1948, g. 20). See " Borstal Institution," Chap. 28.

A person not less than 17 who is convicted under the provisions of the Act of an indictable offence by a magistrates' court may be committed in custody to Quarter Sessions for heavier sentence (M.C-Act, 1952, s. 29).

Appeal. There is a right of appeal to Quarter Sessions under the C. and Y.P. Act, 1933, in connection with youthful offenders against an order committing to the care of a fit person, sending to an approved school, placing under supervision of a probation officer or other person, requiring recognisance to exercise proper care, requiring a contribution, altering payment of an affiliation order, requiring an automatic tobacco machine to be removed, etc. (s.102), requiring parent to pay the fine, etc. (s. 55), decision of Juvenile Court to which a case had been remitted (s. 56),

directing local authority to pay contribution to approved school (s. 90) and variation of trust money (s. 91).

Remand Homes. A county and a county borough council shall provide for its area remand homes where children and young persons may be kept in custody (C. and Y.P. Act, 1933, s. 77). Any juvenile who escapes or is taken away without lawful authority from a remand home (or from a person to whom he has been boarded out by the local authority, or from a person to whose care he has been committed, s. 85), may be arrested without warrant and brought back (see C. and Y.P. Act, 1956). It is a summary offence to assist or induce any such escape or to take away} without lawful authority or to harbour or conceal or prevent from returning to a remand home or special reception centre any such juvenile (1933 Act, s. 78 and Schedule to 1952 Act and 1956 Act, s. 3). See the Remand Homes Rules, 1939.

Where a court (or justice) remands or commits for trial or sentence, in custody, a person under 14 he shall be committed to a remand home or special reception centre if under 12. If he is under 17 he shall be committed to a remand home unless too unruly or depraved (C.J. Act, 1948, s. 27). From a date to be specified no premises shall be used as a remand home unless approved by the Secretary of State who may make rules for the management of such homes (C.J. Act, 1948, s. 49) and cause them to be inspected (1948 Act, 9th Sched.).

Remand Centres. These places of detention have been directed by the Criminal Justice Act, 1948. A remand centre is a place for the detention of persons not less than 14, but under 21, who are remanded or committed in custody for trial or sentence. They should have facilities for the observation of a prisoner's physical or mental condition (Prison Act, 1952, s. 43). If a person not less than 14 but under 17 is committed or remanded but is to< unruly or depraved for a remand home, he should be sent to an available remand centre (C.J. Act, 1948, s. 27 (1)). A person of 16 to 21 committed in custody to Quarter Sessions with a view to Borstal training should go to a suitable available remand centre (M.C. Act, 1952, 9. 28). A person not less than 14 but under 17, who is liable to imprisonment and is remanded in custody for inquiry into his physical or mental condition may be committed to a suitable available remand centre (M.C. Act, 1952, s. 26).

or one in need of care or protection, or supervision may, on interim order under s. 47 of the C. and Y.P. Act, 1933, commit the young person to an available remand centre for inquiry into his physical or mental condition. Abo a young person too unruly or depraved for a remand home may be sent or removed, on such an interim order, to a suitable available remand centre (C.J. Act, 1948, s. 75). These centres will be set up gradually for particular areas. See Chap. 21 (Prison Breach) for offence of harbouring escapee.

Detention Centres. These places of detention are to be established under the Criminal Justice Act, 1948. A detention centre is a place in which persons not less than 14 but under 21

Act, 1952, s. 43). Where a court (or justice) has or would have had,

21 but not less than 14, the court considering every other method (except imprisonment) is not appropriate, may order him to be detained in an available detention centre for 3 months, or less or

be sent to a detention centre if previously he was sentenced to imprisonment or Borstal training or had previously been, since the age of 17, in a detention centre (C.J. Act, 1948, s. 18). A

imprisonment if he were an adult, can be committed for a month to a remand home (1933 Act, s. 54) but should be sent to a detention centre if 14 or over and if a suitable one is available (C.J. Act, 1948, s. 18). These centres will be available gradually to be regulated by the Detention Centre Rules, 1952. See Chap. 21 (Prison Breach) for offence of harbouring escapee.

Attendance Centres. -The establishment of these has been directed by the Criminal Justice Act, 1948. Under that Act, as amended by s. 10 C.J. Act, 1961, an attendance centre is a place at which offenders not less than 10 but under 21, may be ordered to attend at specified times to be given under supervision appropriate occupation and instruction. The Secretary of State may make arrangements for such places with any local or police authority (C.J. Act, 1948, s. 48). If a magistrates' court has or would have had but for this Act, power to impose imprisonment on a person not less than 10 but under 21, or to deal with such a person for breach of a probation order, the court may order him to attend at a reasonably accessible attendance centre for not

is of opinion

that 12 hours would be excessive, and not more than

Such an order may not be made in the case of certain previous offenders mentioned in the section. If the person fails to attend or contravenes the rules, he may be brought on summons or warrant before a magistrates' court and be dealt with for the original offence (C.J. Act, 1948, s. 19). The Attendance Centre Rules, 1958 deal with discipline, rules, records, etc. (C.J. Act, 1948, s. 52).

Approved Schools. The Children Act, 1908, provided for Industrial Schools for those likely to grow up in the ways of crime and Reformatory Schools for youthful offenders. These provisions were repealed and replaced by those of the Children and Young Persons Act, 1933, as follows.

An approved school is a school approved by the Secretary of State (s. 107) for the education and training of persons sent there in pursuance of this 1933 Act, and which is carried on in accordance

with the provisions of the Fourth Schedule to the Act (*as. 79, 80 and 81*). See the Approved School Rules. 1933 and 1949

Certain approved schools have been classified as suitable for persons of specified class or description and persons of such class or description should first be sent to the appropriate classifying school (C. and Y.P. (Amendment) Act, 1952. s. 6) where the allocation of the person sent there will be made to the school most suited to his needs.

Children and young persons may be ordered to approved schools under the following Sections of the Act :

(1) S. 62. as needing care or protection.

(2) S. 64 and s. S. C. and Y P (Amendment) Act, 1952, as uncontrollable by parent or guardian.

(3) Non-compliance with a school attendance order (Education Act. 1944, s 40).

(4) S. 61. if under supervision, on the application of his probation officer.

(5) S. 57. when guilty of an offence punishable in the case of an adult with imprisonment.

(A) S. 84 (8). on application of the local authority to whose care they had been committed.

(7) S. 58. by order of the Secretary of State, in the cases specified in the section (certain juvenile offenders).

A Court shall not order a child under ten to an approved school unless for good reason it is satisfied he cannot be suitably dealt with otherwise (s. 44).

Regard must be had to the religious persuasion of the child or young person (s. 68).

The Court shall order the juvenile to be sent to the available approved school deemed most suitable to the case (s 70 and s. 6 C. and Y.P. (Amendment) Act. 1952. *re* classifying schools) and pending the carrying into effect of the order, may remand him in custody or to the care of a fit person for periods not exceeding twenty-eight days (s. 69). The order shall state whether the local authority, the probation officer or the police authority is to be responsible for conveying the juvenile to his school (sa. 70, 72).

If a child or young person has been ordered to an approved school and cannot be found, and if a Magistrates' Court is satisfied on information that some person can produce him, the Court may issue a summons to such person to produce the child or young person in Court. If he fails to do so without reasonable excuse, he may be summarily convicted and fined. Also any person harbouring or concealing such child or young person is liable on summary conviction to imprisonment and for) fine (s 72).

A child may be detained in an approved school for three years from date of the order or until the expiration of 4 months after he ceases to be of compulsory school age (C.J. Act. 1948, s. 71). A young person under sixteen will be kept there for three years, and if he has attained the age of sixteen at date of the order he

approves, a juvenile who has not been detained in Borstal or convicted of a grave crime (see s. 53) may be kept in an approved school for a further six months, provided that he is not to be

Act, 1948, s. 72).

school have certain powers of supervision, and of recalling him. (C.J. Act, 1961, s. 14).

It is a summary offence for any person subject to a contribution order not to notify any change of address to the person entitled to receive the contributions (s. 87). See also ss. 86 to 91, and Part III of the Children Act, 1948, as regards contributions.

The Fourth Schedule to the 1933 Act provides for the administration of approved schools. A juvenile who escapes or is absent

warrant and brought back to the school, and, with the authority of the Secretary of State may be brought at any time before a magistrates' court (1933 Act, s. 82, 1956 Act and C.J. Act, 1948, 9th Sched.). If a juvenile is guilty of serious misconduct in his approved school, the manager, with the authority of the Sec

Act, 4th Sched.). In such cases the magistrates' court may make a new approved school order lasting if he was 16 or over until he is

15, sentence him possibly to Borstal training (C.J. Act, 1948, s.

or stay away, or to harbour or conceal such juvenile or to prevent him from returning to his school. If there is reasonable ground to believe that some person could produce the absentee, such

without reasonable excuse, he may be summarily convicted and

If on information on oath it appears to a Justice that a person of 15 or over, detained in an approved school, is so seriously un

authorising a constable to remove him to another approved school, remand centre or remand home. Where the warrant does not specify the institution (which may be added later) it shall con

for not more than 48 hours pending further removal. An offender aged 15 or over detained in an approved school and who is considered unsuitable for such training may, by a court order, be transferred to a Borstal Institution. (C.J. Act, 1961, ss. 15-17).

Care of a Fit Person. The Children and Young Persons Act,

1933, authorises a Court to make an order committing a child or young person to the care of any fit person, whether a relative or not, who is willing to undertake the care of him, and if considered advisable, to also make an order placing the juvenile under the supervision of a probation officer.

A local authority shall be a " fit person " for the purpose of such an order (s. 73).

This course may be directed In the following cases :

(1) Where a Juvenile Court finds that a person under

(2) Where a Juvenile Court finds that a child (under 14) has not complied with a school attendance order (Education Act, 1944, s. 40).

(3) Where any Court finds a person under seventeen guilty of an offence punishable in the case of an adult with imprisonment (C. and Y.P. Act, 1933. s. 57).

(4) Where a person under seventeen was placed under super

(5) Pending decision as to what is to be done regarding a child or young person needing care or protection, etc., for periods each not exceeding twenty-eight days (s. 67).

(6) Pending the child or young person's departure to an approved school, for periods each not exceeding twenty-eight days (s. 69).

(7) In refractory cases (C. and Y.P. Act, 1938).

Such an order will normally remain in force until the juvenile is eighteen. His religious persuasion shall be considered and the fit person shall have the same rights and powers and the liabilities as to maintenance as if he were the parent, and the juvenile shall continue in his care (s. 75). If he runs away or is taken away without lawful authority he may be arrested without warrant and brought back to the person having the care of him, and if not received by such person may be brought before a Juvenile Court, and it is an offence to assist, etc., his escape (1933 Act. s. B5, Children Act, 1948. 3rd Sched. and Children and Young Persons Act, 1956, s. 1).

The Secretary of State may discharge a juvenile from such " care " and he may authorise his emigration (s. 84). A Juvenile Court, on the application of any person, may vary or revoke the order (s. 84, and s. 2, 1938 Act).

A contribution order may be made directing payments to the fit person (1933 Act. ss. 86-91, and Children Act, 1948, Part III). See " Approved Schools."

Voluntary Homes and Voluntary Organizations. Children and Young Persons Act, 1933, Part V (ss. 92-94) and Children Act, 1948. Part IV (ss. 27-34). Voluntary homes are homes or other institutions for the boarding, care and maintenance of poor children (up to 18), supported wholly or partly by voluntary contribution or endowment*, not being schools (1933 Act, s. 92, and 1948 Act, ss. 27, 28).

Such homes must be registered with the Secretary of State,

children. It will be a summary offence to carry on an unregistered "home" (1948 Act, s. 29).

The person in charge of such a home shall send particulars, as prescribed, to the Secretary of State every year and failure to do so will be a summary offence (1933 Act, s. 93).

Such a home is subject to government inspection and any ob-

warrant may be obtained (1933 Act, s. 94)

The Secretary of State may, by regulations, control the conditions for the emigration of children or for the boarding out of children. Contravention will be a summary offence (1948 Act, s. 33).

If a child over compulsory school age was either in the care of the local authority or of a voluntary organization but is so no

him up to 18 or leave the voluntary organization to do so. If he goes to another area, the local authority of that area shall be informed (1948 Act, s. 34).

A voluntary organization means a body which carries on activities otherwise than for profit, but does not include any public or local authority (1948 Act, s. 59).

Harmful Publications: The C. and V.P. (Harmful Publications) Act, 1955 makes it a summary offence to print, publish, sell or let on hire or have for the purpose of sale or letting on hire any book, magazine, etc. consisting wholly or mainly of stories told in pictures portraying the commission of crimes or acts of violence or cruelty or repulsive or horrible incidents in such a way as would tend to corrupt a child or young person (under 17) into whose hands it might fall or be likely to fall. Prosecution can be only by or with the consent of the Attorney General. A search warrant under the Act may be obtained. Importation of such works, their printing plates and films is prohibited.

Ages fixed by Law.

Under 1. Death of such infant caused by mother may be infanticide. F. (Infanticide Act, 1938.)

Under 2. Abandoning or exposing such child so as to endanger life or health. M. (Offences against Person Act, 1861, s. 27.)

Under 3. Suffocation of such child in bed caused by drunkenness of person over 16. O. (C. & Y.P. Act, 1933, s. 1.)

Under 5. Intoxicants must not be given to such child unless for a good reason. O. (C. & Y.P. Act, 1933, s. 5.)

CHAPTER XII. CHILDREN

Minding for reward such children from more than one household needs registration. (Nurseries and Child Minders Act, 1948. ss 1. 4.)

Over 5 to 15. Person habitually wandering from place to place with such child and unable to prove that child gets efficient education. O. (C. & Y.P. Act, 1933, s. 10; Education Act, 1944. 8th Sched.)

Under 7. Drunk in charge of such child in public place or licensed premises. O. (Licensing Act, 1902, s. 2.)

Under 8. Not criminally responsible for his acts (C. & Y.P. Act, 1933, s. 50).

Under 10. Approved school : normally ought not to be sent there unless Court considers child cannot be suitably dealt with otherwise (C. & Y.P. Act, 1933, s. 44).

Under 12. Such child must not be trained in dangerous performances (C.&Y.P. Act, 1933, s. 24) Exposing child under 12 to risk of burning or scalding in a room (C. & Y.P. Acts, 1933, s. 11 and 1952. s 8). Child under 12 may be sent to a special reception centre (C. & Y.P. (Amendment) Act, 1952 s. 3).

Over 12. May be licensed to take part on week days in public entertainments (by the Local Authority) (s. 22), or to be trained in performances of a dangerous nature (by a Court). (C.&Y.P. Act, 1933. s. 24.)

Under 13. Defilement of girl under thirteen. Sexual Offences

Occupier, etc., of premises inducing or suffering her to be there for that purpose. Sexual Offences Act, 1956, s. 25. Gunpowder must not be sold to such child. O.

(Explosives Act, 1875, a. 31.)

Prohibited from riding on or driving vehicles, machinery or implements used in agriculture. (Agriculture (Safety. Health and Welfare Provisions) Act, 1956).

Under 14. Such person is a " child " (C. & Y.P. Act, 1933. s. 107) and if over 8 is in law responsible for offences (except rape). If proved to have sufficient capacity to know

side
(Magistrates Courts Act, 1952, s. 21). and may not be fined more than £10 (C.J. Act. 1961, s. 8).
1933,
s. 54) or to an approved school (s. 57).

PART II. OFFENCES AGAINST PERSONS

If remanded or committed in custody he should be sent to a remand home (Criminal Justice Act, 1948, s. 27 (1)).

" Child " of tender years who does not understand the nature of an oath may give unsworn evidence in offence cases if of sufficient intelligence and understands the duty of speaking the truth. (C. & Y.P. Act, 1933, s. 38.)

Air guns: must not accept as a gift any air weapon or ammunition for an air weapon. Must not have in his possession, unless under supervision of a person 21 years or over. If on premises must not fire any missile beyond those premises. Exceptions for members of rifle clubs etc. and use at

Court : must not be in a Court unless as defend

Employment abroad for singing etc., for profit prohibited. (C. & Y.P. Act, 1933, ss. 25, 26.)

charge is made for admission, unless child is twelve or over and duly licensed by the Education Authority. O. However, may occasionally do

premises unless place is licensed for entertainments or two Justices approve. (C. & Y.P. Act, 1933, s. 22.)

gun, etc.) must not have nor may they be lent or given (or sold) to him. O, (Firearms Act, 1937, s. 19.)

Gross indecency with or towards a child or inciting a child to such an act (Indecency with Children Act, 1960).

Kidnapping or knowingly harbouring such child when stolen. F. (Offences Against Person Act, 1861, s. 66).

permitted hours unless resident or merely passing
ing Act, 1953, s.126.)

(C. & Y.P. Act, 1933, s. 8.)

Rags dealer: - must not give child any article what

Health Act, 1961, s. 42).

CHAPTER XII. CHILDREN

Over 14. Is a " young person " up to 17 (C. & Y.P. Act, 1933, should consent to any requirements in a probation order (C.J. Act, 1948, s. 3 (5)). If in custody for an offence a summary court may order his finger prints to be taken by the police (Magistrates'

Under 15. Such a person shall not be admitted to, or bemittd to remain in, a knacker's yard during slaughtering or cutting up the carcase of any animal. (Slaughter of Animals (Prevention of

Education is compulsory. A person under 15 who does not comply with a school attendance order may be sent to an approved school or to care of

such person is limited under s. 18 of C. & Y.P. Act, 1933 and any byelaws made thereunder. (Educa- tion Act, 1944, ss. 35, 40, 44, 58, and 8th Sched.) Any person who for reward, receive* a " foster child" of compulsory school age must notify the local authority, also any change of residence or its death or removal (Children Act, 1958).

The law protects such children under compulsory school age who are maintained for reward apart from their parents (Children Act, 1948,s. 5).

Quarter Sessions, Assizes or Magistrates' Courts shall not impose imprisonment on him (Crim. Justice Act, 1948,s. 17 (1)).

Shot gun: must not have assembled shot gun in his possession unless under supervision of person of 21 or over, or gun is covered with securely fastened gun cover so that it cannot be fired. (Air

Over 15. A child of 15 in the care of the local authority may

or subversive may be moved, on warrant, from approved school to another approved school, remand centre or remand home. (C.J. Act, 1961, s, 15).

Under 16. Abduction of such girl. (Sexual Offences Act, 1956 » 20.)

Alien: need not register until aged sixteen. (Aliens

Begging : causing or procuring or allowing such

Act, 1933, s. 4.) Brothel : if aged four and under 16 must not be allowed by person having charge to reside in or frequent a brothel. M. (C. & Y.P. Act, 1933, s. 3.) Tobacco or cigarette papers must not be sold to such

person unless to a boy messenger in uniform or an employee in the trade, for others. (C. & Y.P.

Act, 1933, s. 7.) Cruelty : to such person by person over 16. M.

(C. & Y.P. Act, 1933, s. 1.) Dangerous performances : causing, procuring or

(C. & Y.P. Act, 1933, s. 23), or the training for same except when over 12 and on licence. O. (s. 24.) Defilement of girl of thirteen and under sixteen.

(Sexual Offences Act, 1956, s. 6.) Occupier, etc.. of premises inducing or knowingly

Offences Act, 1956, s. 26.) Indecent assault on person under 16: consent no

defence. (Sexual Offences Act, 1956, ss. 14, 15.)

Liqueur chocolates must not be sold to such person. (Licensing Act, 1961, s. 24).

Act, 1949, s. 2.) Motor vehicle : Such person must not drive a motor

vehicle on a road (Road Traffic Act, 1960, s. 97.)

Old metal must not be purchased by dealers from

Pawnbroker must not employ any person under 16 to take pledges in pawn. (Pawnbrokers Act, 1872, s. 32.) Seduction, prostitution, unlawful carnal knowledge

or encouraged by person having charge of her.

(Sexual Offences Act, 1956, s. 28.) Smoking by such person in public place entails seizure of the tobacco and cigarette papers.

Street betting with such person is a serious offence

O. or M. (Street Betting Act, 1906.) Street trading by such person is prohibited, except when allowed by byelaw for young person employed by parent (C. & Y.P. Act, 1933, s. 20.)

Parent of such child who is in the care of the local authority shall keep the authority informed of his address. O. (Children Act, 1948, s. 10.)

Over the 16. Alien: must register if under restriction on

Borstal institution : may be sent there if over 16 and under 21. (Crim. Justice Act, 1948, s. 20.)
Incest : female of sixteen or over who consents to

s. 11.) Indictment of such person for manslaughter of person under sixteen or infanticide may result in conviction for cruelty. (C. & Y.P. Act, 1933, s.

1.) Motor cycle or invalid car only may be driven on a road by such person who is under 17. (Road Licensed premises:

Such person (16-18) may have beer, porter, perry or cider with a meal. Licensing Act, 1961, s. 21.)

Act, 1933, s. 107), and is responsible in law for his or her offences. Must be dealt with by a Juvenile Court except when jointly charged with a person

with aiding, etc., the offence (*a.* 46). or for homicide. Can be dealt with summarily by consent for any indictable offence except homicide. Any fine must not exceed £50. (C.J. Act, 1961, *a.* 8.)

Air guns: must not have in his possession in any public place, except air gun or air rifle covered with a securely fastened gun cover, so that it cannot be fired. (Exceptions for members of rifle

Act, 1962, s.1.)

Approved school : may be sent there. But if under 10 only for very good reason (C. & Y.P. Act, 1933, ss. 44, 57.)

Bail : at a police station must be released on bail unless good reason to the contrary. (C. & Y.P.

Care of fit person: may be committed to. (C. & Y.P. Act, 1933, ss. 57, 69, 84, 85.)

Care or protection : when such is required Court may deal with him. (C. & Y.P. Act, 1933, ss. 61-63.)

Employment abroad : may be taken to a place of safety if about to go abroad for singing, etc., for profit, without the necessary licence. (C. & Y.P. Act, 1933, s. 26.)

Firearm or ammunition : must not purchase or hire and same must not be sold or hired to such person. O. (Firearms Act, 1937, *a.* 19.)

Pedlar's certificate must not be issued to such person. (Pedlars Acts, 1871 and 1881.),

Prisoners : must not be allowed to associate with adult prisoners except relatives or persons jointly charged. A girl must be under care of a woman. (C. & Y.P. Act, 1933, s. 31.)

Such person, if refractory and uncontrollable, may be sent to an approved school or put on probation or committed to the care of a fit person. (C. & Y.P. Act, 1933, s. 64, and 1938 Act, s. 1.)

A summary court shall not impose imprisonment on him (Magistrates' Courts Act, 1952, s. 107).

Instead of committal to a remand home, a court (or justice) may send a young person (14-17) to an available detention centre. (Criminal Justice Act, 1948, s. 18 (4)).

If a magistrates' court or justice remand or commit a young person (14-17) in custody he should be sent to a remand home unless too unruly or depraved (Criminal Justice Act, 1948, s. 27 (1)).

Where a young person (14-17) is remanded in custody by a court or justice for inquiry into his physical or mental condition he may be sent to an available

If the young person is before a court for care or protection and inquiry into his physical or mental condition is desirable, the court can send him, on an interim order, to an available remand centre (Criminal Justice Act, 1948, s. 75).

If the young person is remanded or committed in custody to Quarter Sessions for Borstal training he should go to a remand home unless too unruly or depraved (Magistrates' Courts Act, 1952, s. 28).

The local authority shall provide for such a juvenile who is abandoned, lost, etc., and keep him in its care until he is 18 (Children Act, 1948, s. 1).

Must not be in sole charge of an aircraft in motion (Air Navigation Order, 1960, Art. 16 and Sched. 9). *Over 17.* Such person is an "adult."

Motor car (and motor cycle and Invalid carriage and tractors used primarily for work on land in connection with agriculture) may be driven on a road by a duly licensed person of seventeen. (Road Traffic Act, 1960, s. 97.)

A magistrates' court which convicts him of an indictable offence may commit him, in custody, to Quarter Sessions for heavier sentence (Magistrates' Courts Act, 1962, s. 29).

18. Abduction of such unmarried girl with unlawful and carnal intent. (Sexual Offences Act, 1956, s. 19.)

Betting with such person and his employment for betting, is prohibited. O. (Betting and Gaming Act, 1960, s. 7.) Operative 1st May, 1961.

Employment of such persona over fifteen and under eighteen may be regulated by byelaws. O. (C. & Y.P. Act, 1933, BS 19, 20, Education Act, 1944, 8th Sched.)

Employment abroad to sing, etc., for profit is prohibited unless over fourteen and with licence.

Gaming: after 1st January, 1961, no gaming shall take place if any person under 18 is playing, unless (a) it takes place in a private dwelling house, or in the presence of a parent or guardian of such person, and (b) such person takes part in the gaming with the permission of a parent or guardian. (Betting and Gaming Act, 1960, s. 16.) Licensed premises : intoxicants must not be supplied for consumption by him on the premises except beer, porter, cider or perry with a meal to

Public Service vehicle : must not be licensed as a conductor. (Road Traffic Act, 1960, s. 144.) The protection provisions of the Children Act, 1948 may continue to apply until such a lost, abandoned child is 18 (s. 1) and the local authority may assume parental rights (s. 2).

Such a person remains a "child" as far as the Children Act, 1948, is concerned (s. 59), and within Part I of the Children Act, 1958 (s. 17). After 1st August, 1961, a worker under 18 shall not feed produce into the drum feeding mouth of a thresher. (Agriculture (Threshers and Bailers) Regs., 1960.)

Over 18. Care of a fit person shall cease when juvenile is eighteen. (C. & Y.P. Act, 1933, s. 75.)

Over 19J. Approved school detention should cease at nine
Crim.
Justice Act, 1948, s. 72.)

Under 21. Abduction of such girl on account of her fortune with intent to marry or carnally know her. (Sexual Offences Act, 1956, s. 18.)

Betting circulars must not be sent to such person. M. (Betting and Loans (Infants) Act, 1892, s. 1.)

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Such person shall not by way of business receive or

maker or to the Racecourse Betting Control Board. (Betting & Gaming Act, 1960, s. 3.)
Operative 1 June, 1961.

Borstal Institution may be ordered if over sixteen and under twenty one. (Crim. Justice Act, 1948, s. 20.)

When committed or remanded in custody by a
sent to an available remand centre, and if not, to prison, but if under 17 he may be sent to a remand home unless too unruly or depraved (Magistrates' Courts Act, 1952, s. 28).

Loans circulars must not be sent to such person.

Motors: locomotives, tractors and heavy motor cars must not be driven on a road by such person

connection with agriculture (Road Traffic Act, 1960, s. 97.)

Procuration of such a girl for unlawful carnal connection. (Sexual Offences Act, 1956, s. 23.)

driver. (Road Traffic Act, 1960, s. 144.)

No court or justice shall impose imprisonment on

appropriate (Crim. Justice Act, 1948, s. 17 (2)).

If 10 and up to 21 he can be ordered to attend at an attendance centre instead of imprisonment or for and 1961, s. 10).

be sent to an available remand centre (Crim.

is not a widow or widower requires consent of parent or guardian or Court, as prescribed by s. 3, Marriage Act, 1949.

Of or over 2 If a first offender, a magistrates' court cannot impose imprisonment on him unless no other method is appropriate (First Offenders Act, 1958, s. 1).

Over 21. If a persistent offender he can be sentenced to corrective training (Crim. Justice Act, 1948, s. 21 (1)).

Under 24. In the case of a man under 24 his reasonable belief that the girl was sixteen or over, will be a defence on the first occasion on which he is charged with the defilement of a girl of thirteen and under sixteen. (Sexual Offences Act, 1956, s. 6.)

ventive detention (Crim. Justice Act, 1948, *a.* 21 (2)).NOTE

The above ages refer to males and females unless otherwise indicated. A person attains a given age at the first moment of the day preceding his birthday, see note, 95 J.P. 172.

PART III. OFFENCES IN CONNECTION WITH PROPERTY

Chapter XIII BREAKING IN

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Breaking Into Premises. Any breaking into premises with felonious intent is a serious felony punishable with imprisonment.

At Common Law the breaking and entering of the dwelling-house of another or of a church in the night time with intent to commit a felony therein, was known as burglary and was punishable by death, but any breaking in by day was only a misdemeanour.

Night and day breakings in are now provided against by the Larceny Act, 1916, and may be classified as burglary, house-breaking and sacrilege.

Burglary. The felony of burglary is committed by any person who :

(1) In the night breaks and enters the dwelling-house of another with intent to commit a felony therein, or

(2) In the night breaks out of the dwelling-house of another, having entered the said dwelling-house with intent to commit a felony therein or having committed any felony in the said dwelling-house (s. 25).

Four points must be considered and proved, viz. :

(1) *The time.* It must be night time that is, the interval between 9 P.M. and 6 A.M. (*a. 46*). The breaking must have taken place during night time. If breaking precedes entering both must have taken place at night though not necessarily on the same night. When entry precede* breaking the entry need not have taken place at night.

(2)

habitually sleep or any building accessory to the dwelling-house, occupied along with it and communicating with it either directly or by means of a covered and enclosed passage (a. 46 (2)). " Dwelling house " means some permanent structure in which some person or persons habitually sleep as

in it. A dwelling house remains a " dwelling house " even though the residents are absent provided such absence is temporary and there is an intention of returning. If a dwelling each i; a "dwelling house."

(3) *The manner.* There must be a breaking and an entering,
The breaking may be either :

(a) Actual, as occurs when the burglar disturbs any of the means provided for keeping people out. There need not be an actual breaking of anything ; it will be sufficient to turn a key or lift a latch or raise a closed window. It i.i not "burglary " to enter by an open door or window but after such a non-burglarious entry it would be burglary to subsequently break an inner door. Entry by use of a false key would amount to a " breaking."

(b) Constructive, which occurs when admission is obtained by getting some inmate of the house, by force or by fraud, to open. For example, entrance on threats of violence, or by knocking at the door and securing entry on pretence of having legitimate business inside.
There must be some entering of the dwelling house, and the least insertion of some part of the body is sufficient. If there is no bodily entry but an instrument is used to break the premises, it is not burglary unless the instrument was inserted

be convicted of the attempt to commit burglary.

Burglary is also committed when a person " breaks out " in the night time, after a previous entry with intent to commit felony or after committing a felony therein.

(4) *The intent.* There must be an intent to commit some felony, whether executed or not. For example to steal, to kill, to commit rape. This felonious Intention must exist at the time of breaking and entering, and evidence should be given of the facts from which the intent may be presumed. If the intent is to commit a misdemeanour It is not burglary.

Night Offence* akin to Burglary The Larceny Act, 1916 also deals with some night offences which are akin to burglary but which do not amount to burglary. These crimes art :

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Entering any dwelling - bouse in the night - time with intent to commit a felony. In such a case there is no breaking. The offence is felony (s. 27 (1)). See below under housebreaking.

Being found by night armed with any dangerous or offensive weapon or instrument with intent to break or enter into any building and to commit any felony therein. M. (S. 28 (1)).

Being found by night having in possession without lawful excuse (the proof whereof lies on the accused) any key, picklock, crow, jack, bit or other housebreaking implement. M. (S. 28 (2)). Almost anything may be such an instrument.

Being found by night with face blackened or disguised with intent to commit any felony M. (S 28 (3)).

Being found by night in any building with intent to commit »ny felony therein. M (S. 28 (4)).

The above mentioned offences under s. 28, where, in the case of an offence under paras. (1), (3) or (4) the felony alleged to have been intended is among the offences specified in the First Sched.

an offence under para. (4) the building is neither a dwelling house nor a building within the curtelage of or occupied with a dwelling - house, arc now triable summarily with the accused's consent. (C.J.A. Act, 1962. Third Sched.)

Any person to whom any property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that any offence has been committed against this Act with respect to such property, shall, if it is in his power, arrest the person offering t he same and take him and such property before a justice (s. 41).

Any person may arrest without warrant any person found committing any of the above offences, and a constable may arrest without warrant any person he finds lying or loitering in any highway, yard or other place during the night whom he has good cause to suspect of having committed or being about to commit any felony against the Act (s. 41) " Night " in the Larceny Act. 1916, means the interval between 9 P M and 6 A M on the following day (s. 46). See " Loiterers and Suspected Persons," Chap. 28.

Housebreaking. Only a misdemeanour at common law, housebreaking is now a felony by the Larceny Act, 1916, and H consists of :

(1) The breaking and entering of any dwelling- house or any building within the curtilage thereof and occupied therewith, or any schoolhouse, shop, warehouse counting house, office, store, garage, pavilion, factory, workshop or Government, municipal or public building, and committing any felony therein (*a.* 26 (1)), or

(2) The breaking out of the same, having committed any felony therein (s. 26 (2)), or

(3) The breaking and entering of the same or of any place

of Divine worship, or any building within the curtilage, with intent to commit any felony therein (s 27 (2)), or

(4) Entering any dwelling house in the night with intent to commit any felony therein (». 27 (1)).

Where the place broken into or out of is neither a dwelling house, nor a building within the curtilage of or occupied with a dwelling house, and the felony alleged to have been committed or intended is among the offences specified in the First Sched. to the M.C. Act, 1952, as amended by C.J.A. Act, 1962, these crimes are now triable summarily with accused's consent. (C.J.A. Act, 1962, Third Sched.)

Housebreaking differs from burglary in that it extends to a wider range of buildings, including shops, offices and stores, whereas burglary is confined to dwelling-houses. Also burglary must occur during the night time (9 P.M. to 6 A.M.), while housebreaking, except for the one case of entering (without breaking) a dwelling house in the night with felonious intent (s. 27 (1)), may take place at any time

Premises were broken into and property stolen. Very shortly which is good evidence of the house breaking. It is not "receiving" as a man cannot receive from himself (*R. v. Loughlin* (1951)).

Any person may arrest without warrant any person found housebreaking (s. 41).

house.

Sacrilege. Larceny Act, 1916, a. 24. The felony of sacrilege is committed by :

(1) Breaking and entering any place of Divine worship and committing any felony therein, or

(2) Breaking out of any place of Divine worship, having committed any felony therein.

This felony may be committed at any time and in respect to any place of Divine worship The breaking and entering of a place of Divine worship with felonious intent is housebreaking (s. 27 (2)). See above. Where the felony alleged to have been committed in the place broken into or out of is among the offences specified in the First Sched. of the M.C. Act, 1952, as amended by the C.J.A. Act, 1962, this crime is now triable summarily with accused's consent. (C.J.A. Act, 1962, Third Sched.)

Any person has power to arrest without warrant any person found committing this felony of sacrilege (s. 41).

found in possession of housebreaking implements, or found armed with intent to commit felony (Vagrancy Act, 1824), set " Loiterert and Suspected Persons," Chap. 28.

Any expression of " time " in any Act of Parliament unless otherwise stated means Greenwich mean time (Statutes (Definition of Time) Act, 1880), but where there is any reference to a point of time in any enactment, regulation, rule, document, etc., the time referred to shall, during summer time, be deemed to be the time aa fixed for general purposes by these Acts (Summer Time Act, 1922, and later Acts).

Chapter XIV**LARCENY**

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Larceny In General. Stealing or depriving a person of his property was from the earliest times regarded as a serious offence. It was called larceny, and was a felony at common law. It has been defined as the felonious taking and carrying away of the personal goods of another with the intention of depriving the rightful owner of same.

The crime at common law was only possible in connection with personal goods of some value. There had to be a taking and moving of the goods, because change of possession was the root of the idea of theft.

Various statutes made the stealing of many specific articles larceny, thus supplementing the Common Law, and section 1 of the Larceny Act, 1916, has given a statutory definition of stealing.

Forms of Stealing. The stealing of another's property may be committed either by violence or without violence. Breaking into premises is usually followed by stealing, but the various forms of this crime have already been treated as distinct offences. See " Breaking into Premises," Chap. 13.

The main forms of crime in connection with the stealing or depriving a person dishonestly of his property are as follows :

- (1) Larceny. See " Larceny by Statute," which deals with simple larceny, stealing from the person, larceny in a dwelling-house, larceny by a servant or by a bailee, larceny by mistake or by finding, and other larcenies by statute,
- (2) Stealing from the person with violence. See " Robbery."
- (3) Larceny by means of fraud. See " Larceny by Trick."
- (4) Obtaining goods by false pretences. See " False Pretences."
- (5) Embezzlement or the stealing of property on the way to its owner. See " Embezzlement."

(6) Frauds by agents, trustees, etc. See " Conversion."

(7) Offences in relation to bankruptcy See "

Bankruptcy

Offences."

(8) False personation for wrongdoing. See " Personation."

(9) Receiving property knowing it to have been stolen

See

" Receiving Stolen Property."

" Blackmailing," or the obtaining or endeavouring to obtain

and Menaces." Chap. 8.

Property and Possession. These terms are used in distinguishing the various forms of stealing and need explanation.

When a person owns a thing he is said to have the property in it that is, his right to have it and enjoy it as against everyone

When a person has control over a thing he is said to have possession of it, and his possession may be actual and physical or constructive. Constructive possession is a legal possession though not actually physical ; for example, a person keeps a thing in his house or in some place over which he exercises control, or he leaves it in the control of his servant as in the case of his driver, while out with his car. When a man becomes owner of a thing he acquires the property in it and when it comes under his control he gets possession of it. He may part with possession but still retain his property in a thing, e.g. by lending it or entrusting it to a bailee.

means of a trick), but has not given up his property in the article, it is larceny a felony.

the property and it is stolen by certain persons when it is on the way into his possession, it is embezzlement. a felony.

If the owner hands over the possession of and the property in an article, induced to do so by false representation, it is false pretences, a misdemeanour.

If the owner gives credit on the strength of some fraud and is thereby at a loss, it is obtaining credit by fraud, which is a statutory misdemeanour.

The expression " property " as fully denned in s. 46 of the Larceny Act, 1916, includes any real or personal property, money, debts and legacies, documents giving title to property and any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange.

Larceny by Statute. The Larceny Act, 1916, defines stealing

S. 1. For the purposes of this Act :

(1) A person steals who. without the consent of the owner, fraudulently and without a claim of right made in ennd faith, takes and carries away anything capable of being stolen, with

intent at the time of such taking permanently to deprive the owner thereof.

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently convert! the same to his own use or to the use of any person other than the owner.

(2) (i) The expression " takes " includes obtaining the possession :

(a) by any trick ; (6) by intimidation ;

(c) under a mistake on the part of the owner, with knowledge on the part of the taker that possession has been so obtained ;

(d) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps.

(ii) The expression " carries away " includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached.

(iii) The expression " owner " includes any part owner or person having possession or control of or a special property in anything capable of being stolen.

(3) Everything which has value, and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen.

Provided that (a) save as expressly provided in the Act with respect to fixtures, growing things and ore from mines, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof ; and (6) the carcase of a creature wild by nature and not reduced into possession while living, shall not be capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcase.

Notes on this definition. A bailee is a person entrusted with property for some purpose, usually to re-deliver to the owner or to deliver to somebody else, e.g. a tailor given a coat to repair or a messenger given a parcel to deliver. A bailee can commit larceny of the goods entrusted to him or fraudulent conversion (see " Conversion "), or may unlawfully pawn them. (See " Pawn-brokers," Chap. 31.)

The stealing must be without the consent of the owner. His consent must be a true consent, not consent induced by deceit, as in the case of larceny by trick. See " Larceny by Trick."

As a general rule a person cannot steal his own property, but he may steal his own property from his bailee or from a person who has some special property in it.

not be larceny.

An example of larceny by mistake would be where a man receives too much money in change and, knowing that a mistake has been made, keeps the excess money.

As regards finding, when a person finds an article he should take reasonable steps to discover the owner, such as reporting the matter to the police or to the occupier of the premises on which he finds the article. If an article has been lost or mislaid under circumstances that would enable the owner to find it, e.g. leaving a key in a hired vehicle, any appropriation

To constitute larceny of things attached to the realty (such as growing grass) or of carcasses of wild creatures, such things or carcasses must have been first detached or killed and then

taken them away. When anything attached to the land (such as grass) has been severed from the land it is still the property of the owner of the land and is capable of being stolen.

any claim to it a taker cannot be found guilty of larceny unless there is evidence of felonious intent.

Acts of Parliament (see later) provide for the larceny of very many specified articles*, some of which were not the subject of larceny at Common Law.

intending at the time not to deprive the owner permanently of the thing, it is not larceny. However the taking wrongfully of another person's property but without intention to steal it (a bicycle in this case) followed later by action showing intention to deprive the owner permanently of his property amounts to larceny (*K. v. Gullefer* (1853) and *R. v. Turner* (1949)). Larceny may be committed even though the taking was not for the benefit of the thief or even for anyone's benefit, so long as there was an intent to deprive the owner permanently.

provided by any statute, and is a felony punishable with imprisonment not exceeding five years (Larceny Act, 1916, s. 2). This s.2 does not create an offence, it merely arranges the penalty. Larceny

given ins. 37 of the Act as amended by C.J. Act. 1948, 10th Sched.

Compound larceny is stealing accompanied by circumstances of an aggravated nature and for which special punishment is provided by Act of Parliament, varying in severity in different clauses. That by the sections of the Larceny Acts, larceny aggravated in its nature of the person, place or thing concerned to punishment varying from imprisonment for three months to fine.

mitted or where the accused was arrested or is in custody or where he has the stolen property in his possession. (M.C. Act, 1952, ss. 2, 3; C.J. Act, 1925, s. 11 and Larceny Act, 1916, s. 39.)

Statutory Larcenies (Larceny Acts, 1861 and 1916).

(1) *Larceny from the person.*

Stealing any property from the person of another. F. Fourteen years. (1916 Act, s. 14.)

(2) *Larceny by particular persons.*

possession or power of his employer. F. Fourteen years. (1916 Act, s. 17 (1).)

Person employed in the public service of the Crown or in sion by virtue of his employment. F. Fourteen years. (1916 Act, s. 17 (2).)

Officer of the Post Office stealing or embezzling a postal packet in course of transmission by post. F. Imprisonment for life or seven years. (1916 Act, s. 18.) See "Post Office," Chap. 26.

Officer of the Bank of England or Ireland stealing any money, security, etc., belonging to or entrusted to such bank. F. Imprisonment for life. (1916 Act, s. 19.)

Tenant or lodger stealing any chattel or fixture let to him with any house or lodging. K. (1916 Act, s. 16.) See "Landlord and Tenant," Chap. 29.

For kindred offences see "Embezzlement" and "Conversion."

(3) *Larceny in particular places.*

consent M.C. Act, 1952, ss. 19, 20 and 1st Sched.) or (6) by putting any person therein in bodily fear by menaces or threats. F. Fourteen years. (1916 Act, s. 13.)

Ships, docks or wrecks. Stealing any goods in vessels in ports, canals, or rivers, or from docks, or from wrecks or vessels in distress. F. Fourteen years. (1916 Act, s. 15.)

Workshops, etc. Stealing any textile goods in process of manufacture, to the value of 10s., in any building, field or place. F. Fourteen years. (1916 Act, s. 9.)

Mines. Stealing the ore of any metal or any coal from a mine. F. (1916 Act, s. 11.) Miners removing or concealing any ore with intent to defraud the owner, etc. F. (1861 Act, s. 39.)

(4) *Larceny of particular things*

Animals. Stealing any horse, cattle or sheep. F. Fourteen years. (1916 Act, s. 3.)

Killing any animal with intent to steal the carcass, skin or any part of the animal killed is felony if the stealing of the animal would have amounted to felony. (1916 Act, s. 4.)

It is an offence to steal deer (see "Larceny of Animals," Chap. 35), hares and rabbits (see "Poaching Offences," Chap. 19), dogs (see "Dogs," Chap. 35), domestic animals (see "Larceny of Animals," Chap. 35), domestic birds (see "Birds," Chap. 35), fish (see "Fishery Laws," Chap. 19).

Documents. Stealing any document of title to lands, or any document of any Court or other legal document, or any original document relating to the business of any public office. F. (1916 Act, s. 7.)

Fraudulently destroying, etc., any valuable security or any document of title to lands. F. (1861 Act, ss. 27 and 28.) Fraudulently removing or unlawfully and maliciously injuring or destroying any original document belonging to any Court. F. (1861 Act, s. 30.)

Electricity. Maliciously or fraudulently abstracting, diverting or using any electricity. F. (1916 Act, s. 10.)

Fences. Stealing any part of any fence, stile, or gate, or not satisfactorily accounting for the possession of any part of any fence, stile, or gate, value at least 1s. Summary offence. (1861 Act, ss. 34 and 35.)

Fixtures. Stealing the glass or woodwork of a building, any metal or utensil or fixture fixed in or to any building, anything metal fixed in land or as a fence or in any street, square, public place or burial ground. F (1916 Act, s. 8 (1).)

Fruits, vegetables, etc. Stealing, destroying or damaging with intent to steal any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, hothouse, etc.

conviction for same. F. (1916 Act, s. 8 (3).) Stealing any cultivated root or plant used for the food of man or beast or for medicine, distilling, dyeing, or any manufacture, and growing in any land, open or enclosed, not being a garden, orchard, pleasure or nursery ground. Summary offence. (1861 Act, s. 37.)

Postal packets (mails). Stealing a mail bag, or any postal packet in course of transmission by post, or any property out of such postal packet, or stopping a mail with intent to rob the mail. F. Imprisonment for life. (1916 Act, s. 12.) See "Post

Trees and shrubs. Stealing the whole or any part of any tree or shrub wheresoever growing (value 1s. at least) or being in possession of same and not satisfactorily accounting for same. Summary offence (1861 Act, ss. 33 and 35) ; but after two previous summary convictions for same. F. (1916 Act,

Stealing the whole or any part of any tree or shrub growing in

any park, gardens or grounds (value exceeding £1), or growing anywhere (value exceeding £5). F. (1916 Act, s. 8 (2).)

Water and gas if stored in pipes or reservoirs for sale or use may be the subject of larceny at common law, and as same have value and are the property of a person (1916 Act, s. 1 (3) and s. 2) it would appear that larceny by statute is possible. See Water Act, 1945, Sched. III s. 66. and Gas Act, 1948, Sched. III (29) for fraudulent acts.

Wills. Stealing any will or other testamentary disposition F. Imprisonment for life. (1916 Act, s. 6.) Fraudulently destroying, obliterating or concealing any will or codicil during the life of the testator or after his death. F. (1861 Act, s. 29.)

Power of Arrest without Warrant. In addition to the common law power of arrest without warrant for felony, the Larceny Acts (ss. 103 and 104 of 1861 Act and s. 41 of 1916 Act) give wide power of arrest without warrant to constables and to private persons as follows :

(1) Any person may arrest without warrant any person found committing any offence under (a) the Larceny Act, 1861

(except angling in the day time (s. 24)), and (b) the Larceny Act 1916 (except threatening to publish with intent to extort (s. 31)) (1861 Act, s. 103; 1916 Act, s. 41).

(2) Any person, to whom property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that an offence under the Larceny Acts has been committed with respect to such property, should, if in his power, arrest the person offering the same. (1861 Act, s. 103 and 1916 Act, s. 41.)

(3) Any constable may arrest without warrant any person he finds lying or loitering in any highway, yard or other place during the night (9 P.M. to 6 A.M.) and whom he has good cause to suspect of having committed or being about to commit any felony against the Larceny Acts, and take him as soon as reasonably may be before a Justice to be dealt with according to law. (1861 Act, s. 104 and 1916 Act, s. 41). If no other

specific charge application to have him bound over may be made.

For power to search for stolen property, see " Search Warrant,"* Chap. 5. Also a search warrant can be granted by a Justice (s. 42). Summary Punishment. By s. 19 of the Magistrates' Courts Act, 1952, the Justices may, if they consider it expedient and if the accused consents, deal summarily with the following larceny offences given in the First Sched. to the Act.

1916 Act. Sections 2 (simple larceny), 4 (killing animals with intent to steal), 5 (dog stealing), 8 (stealing fixtures, trees, etc.), 9 (stealing goods in course of manufacture), 10 (stealing electricity), 12 (stealing postal packets), 13 (a) f steal - ing to value of £5 in dwelling house), 14 (larceny from the

by tenants or lodgers), 17 (1) and (2) (larceny and embezzlement by clerks or servants), 18 (larceny by postal official), 20 (conversion of property value not exceeding £100), 32 (1)

United Kingdom). 35 (aiding and abetting in any of the pre-1861 Act. Section 27 (fraudulently destroying any valuable

Robbery. Robbery is the felonious taking of property from another against his will, accompanied by violence or putting him in fear. It is in effect larceny aggravated by violence or terror. Larceny Act, 1916. s. 23, declares the following to be felonies :

- (1) To assault any person with intent to rob. Penalty, five years.
- (2) To rob any person. Penalty, fourteen years.
- (3) Being armed with any offensive weapon or instrument, to rob or assault with intent to rob any person.
- (4) Being together with one other person or more, to rob or assault with intent to rob any person.
- (5) To rob any person and at the time or immediately before

The last three offences are regarded as so serious that those guilty may be sent to imprisonment for life (see also Larceny Act, 1916, s. 37, as amended by C.J. Act, 1948, 10th Sched.) These last three offences are termed " robbery with violence " to indicate that some weapon or more than one person, or some actual physical violence, was involved in the act of robbery.

The term " highway robbery " refers merely to a robbery which takes place on a highway ; robbery may take place in a house or field as well as on a highway.

As the gist of the offence is the force and terror accompanying the larceny of the property, therefore it should be shown that the injured party was actually in fear, or that the circumstances were such that the Court may presume some fear of danger, or that violence was actually used.

The Prevention of Crime Act, 1953, is intended to prevent ill disposed persons from committing acts of violence leading to robbery.

It makes it an offence, punishable summarily or on indictment, weapon without lawful authority or reasonable excuse, the proof thereof to lie on him.

In this connection " public place " means any highway and any weapon " means any article made or adapted for use for causing injury to the person or intended by its carrier for such use by him.

committing ^{hi} offence if he is not satisfied <u> to that person's

identity or place of residence, or has reasonable cause to believe that arrest is necessary in order to prevent the commission by him of any other offence in which an offensive weapon might be used. A firearm or imitation firearm though it is not loaded or is incapable of discharging any missile is deemed to be an offensive weapon or instrument for the purpose of robbery. (Firearms Act, 1937, i. 23.)

Larceny by Trick. As this felony closely resembles false pretences, it is now specially considered. In an ordinary case of larceny the thief deprives the owner of his possession of the article and of the benefits of his ownership, against the owner's consent and without his knowledge. However, in some cases the owner hands over possession of an article to the thief, being induced to do so by some trick or fraud, but without any intention of parting with his property in the article. This is commonly termed larceny by trick.

In larceny by trick the thief obtains possession of the article by means of some trick or fraudulent expedient. The owner is deceived, and as a result parts with possession, therefore the thief is regarded as having stolen and "taken" the article, although the owner has willingly handed it over (Larceny Act, 1916, s. 1).

The owner's consent is not true consent, as it was obtained by fraud, and the owner does not intend to part with his property in the article. Larceny by trick is a felony, and, therefore, there is power to arrest without warrant. False pretences is a misdemeanour, therefore to arrest a warrant is necessary, except in the cases where the offender is caught committing the offence, at which time the Larceny Act, 1916, s. 41, gives power to arrest without warrant.

Under s. 44 of the Larceny Act, 1916, a person indicted for stealing may, on evidence that he took the article in such manner as would amount to false pretences be found guilty by the jury of false pretences, and a person indicted for false pretences may be convicted of false pretences although the evidence showed that he stole the property in question.

Examples of this Felony. "*Rating the changes.*" For example, putting down a sixpence and six pennies and asking for a shilling in return; getting the shilling and leaving it with the money already on the counter; asking for and receiving a florin in exchange for the lot. Here the thief gets two shillings for one shilling and so steals a shilling by trick.

"*Il'fishing.*" For example, a person at a race meeting, just before a race, makes a bet with a bookmaker. The horse backed wins, but the bookmaker departs with the money and is not to be found or refuses to pay up when the person tries to collect his winnings (which include the amount he staked and which he did not intend to part with unless the horse lost).

" *King dropping.*" The accused displays a ring which he says he has just found or which he pretends to pick up or which he suggests has been illicitly acquired. He offers to leave this apparently valuable ring with an onlooker on condition the latter will deposit cash or some valuable as security. If this is done the accused departs with the money or valuable and later the ring is found to be almost valueless.

" *Confidence trick.*" Where following a quickly developed acquaintance the accused, by a plausible tale and apparent proof of his own honesty, induces the victim in his turn to deposit cash or valuables in accused's possession as a proof of honesty, and then accused disappears with the property. This trick has many forms. Other examples of larceny by trick are :

Obtaining articles from an automatic machine by putting in metal discs, not money.

Servant sent to a house with goods ordered and with instructions not to leave them without getting payment, but being induced by some trick to part with the goods without payment.

Obtaining goods from a messenger by falsely pretending to be the person to whom the goods were to be delivered.

Asking for change of £1, obtaining the change, and departing with both the £1 and the change.

In all such cases it is larceny, because the victim did not intend or was not authorised to part with the property in the money or articles the possession of which he has handed over to the thief who has taken them fraudulently and without a claim of right (s. 1). The charge against the thief is larceny.

False Pretences. This term is applied to the offence of obtaining property fraudulently by means of a false representation that some facts exist or existed. It is a misdemeanour by statute. The attempt is a misdemeanour at Common Law.

Larceny Act, 1916, s. 32 (1). Every person who by any false pretence, with intent to defraud,

(a) obtains from any other person any chattel, money or valuable security, or

(b) causes or procures any money to be paid or any chattel or valuable security to be delivered to himself or to any other person, for the use or benefit or on account of himself or any other person,

shall be guilty of a misdemeanour. Penalty, five years.

The following points, as indicated in above description of the offence, are material in a case of false pretences, viz. :

(1) The making of a false pretence The pretence must have been false, but mere exaggeration or trade puffing will not be sufficient. It may be made in writing, and if so the circumstances may amount to forgery, for which the punishment is more severe. It may be in words or by the conduct and acts of the accused. It should be a pretence of an existing

fact or of some fact that has existed. A promise that a certain state of things shall exist in the future or that something will be done in the future is not sufficient. A promise is not a pretence, so a promise as to the future will not in itself make the offence. (See *R. v. Dent* (1955).) However, a promise to do something together with a false representation that the promiser has the power to do that thing, may be false pretences ; for example, a married man posing as unmarried promises that he will marry a girl and thus gets money from her. Also there are some decided cases which suggest that a promise to do a thing in the future may amount to a false pretence that the maker has a present intention and power to do so. (See *R. v. Naylor* (1865), *R. v. Bancroft* (1909), and *R. v. Carpenter* (1911).) The nature of the false pretence should be set out in the information or summons.

(2) The obtaining of the property by means of the false pretence. If the property was not obtained or if the injured party was not taken in by the false pretence but, however, parted with his property, the accused may be convicted of the misdemeanour of attempting to obtain it by false pretences. The property obtained should have been some definite thing, as it is not " false pretences " to obtain some advantage, such as a ride in a train. The change of ownership of the article must have been caused by the false pretence, viz. the defrauded person, believing the false pretence to be true, parted with his money or goods.

(3) The intent to defraud. It will not be necessary to prove an intent to defraud any particular person ; it is sufficient to prove that the accused did the act with a general intent to defraud (see Larceny Act, 1916. s. 40 (1)). The intent will usually be shown by the circumstances.

Evidence of similar acts or conduct on the part of the accused is admissible to prove the intent to defraud, as showing a systematic course of dishonest conduct on his part. Any person may arrest without warrant any person he finds committing this offence (Larceny Act, 1916, s. 41). A case of false pretences may be dealt with summarily under M.C. Act, 1952, s. 19 and 1st Sched., if the accused consents.

Other similar Offences. Obtaining credit by fraud. Debtors Act, 1869, s. 13. It is a misdemeanour if in incurring any debt or liability (liability for money or money's worth) any person obtains credit under false pretences or by means of any other fraud. A person who orders and obtains a meal in a restaurant without having the means to pay for it, or who orders goods without either the means or the intention of paying for them, will be guilty of this offence, which may be punished summarily if accused consents to trial (M.C Act 1952, s. 19. 1st Sched.).

Evidence of credit obtained from other persons previously is admissible as showing system and negating accident or mistake (*S. v. Wyatt* (1904)).

Companies Act, 1948, ss. 328-334. Where a company has been put into liquidation, any of its officers who have obtained credit by fraud or committed other frauds in connection with the company are guilty of misdemeanour and may be prosecuted summarily. The officers are similarly liable if proper accounts were not kept, and directors may be held personally responsible for any fraudulent trading.

Cheating, or the fraudulent obtaining of another's property by public, is a misdemeanour at common law. For example, selling by false weights or selling inferior articles under some false mark or description.

Larceny Act, 1916, s. 32 (2). It is misdemeanour for a person, by any false pretence, with intent to defraud or injure any other

- (a) to make, destroy, etc., any valuable security or,
- (6) to attach any name or seal to any paper in order that same may be afterwards made into or used as a valuable security.

National Insurance Act, 1946, s. 52. It is a summary offence to make any false representation or statement to obtain benefit, etc., under the Act.

Proceedings may be taken within 12 months from the commission of the offence or within 3 months after the offence comes to

Insurance (Industrial Injuries) Act, 1946, s. 67, for somewhat similar provisions.

Police Pensions Act, 1948, s. 7. Any fraudulent attempt to obtain any pension or benefit under the Act is punishable either on indictment or summarily.

For cheating at play, see Chap. 36. For misrepresentations by assistance frauds, see Chap. 27.

a servant or clerk converts to his own use anything received by him for his employer before it has passed into the possession of his employer.

embezzlement had to be made a special offence because the servant or clerk is in lawful possession of money, etc., which he receives on behalf of his master, and the misappropriation of

This crime is defined by s. 17 of the Larceny Act, 1916, thus :
Every person who being a clerk or servant or person employed in the capacity of a clerk or servant, fraudulently embezzles the whole or any part of any chattel, money or valuable security delivered to or received or taken into possession by

him for or in the name or on the account of his master or employer shall be guilty of felony.

Under the Larceny Act, 1916, the following may be liable to prosecution for embezzlement : Clerks or servants, employees in the public service of the Crown or in the police, officers of a local marine board (s. 17), postal servants *re* postal packets (ss. 18 and 33, and Post Office Act, 1953, s. 57), officers of the Bank of England or Ireland (s. 19), and a co-partner or one of two or more persons owning an interest in any property (s. 40 (4)).

Also several statutes deal directly with embezzlement by specified classes of persons. For example: customs officers (Customs and Excise Act, 1952), and employees of councils of counties or county boroughs (Local Government Act, 1933, s. 120).

Essentials of the Crime of Embezzlement.

(1) The offender must have been employed as described in the various Acts referred to above or be a co-partner or a clerk or servant. A clerk or servant within the meaning of the Act is a person whom the master not only employs but also directs as to when and how the work should be carried on. If the accused is merely an agent employed to do certain work but not bound as to when and how it is to be done, he may not be convicted of embezzlement, though he may be convicted of conversion. A clerk or servant is generally paid a salary, while an agent is usually paid by commission.

(2) The accused must have received the money or goods from some third person, for or on account of his employer, in the course of his employment as clerk, servant, etc. If he appropriates money, etc., which he has received from his employer directly or indirectly, it is larceny ; and if he receives money, etc., for his employer and places it in the possession of his employer (i.e. in the till, in the shop, etc.) and then takes it out and appropriates it, it is also larceny, but it is not embezzlement. However, if indicted for embezzlement a man may be found guilty of stealing, and if indicted for stealing he may be found guilty of embezzlement (Larceny Act, 1916, s. 44 (2)).

(3) The accused must have fraudulently embezzled some specific sum of money or some property. A general deficiency in accounts is not sufficient, nor is mere neglect to account for moneys received sufficient proof of embezzlement.

However, a dishonest clerk or servant who is not liable for embezzlement may be made amenable for false accounting. See Chap. 17. The offences of embezzlement, fraudulent conversion, false

accounting and larceny are closely connected, so the facts of an alleged offence of embezzlement should be carefully considered. A case of embezzlement, stealing, or unlawful disposing of materials, etc., by any hired person to whom they may have been entrusted to prepare or work up, may be dealt with summarily under the Frauds by Workmen Act, 1777. A servant who.

contrary to orders, takes his master's corn or other food to give the same to his master's animals, does not commit felony, but may be dealt with summarily under the Misappropriation by Servants Act, 1863.

Conversion. Conversion is the offence committed by a person who is entrusted with property not his own and who deals wrongfully with it. The essence of the offence is fraud. It may be committed by agents, factors, trustees, directors and municipal officials, and it is a misdemeanour under ss. 20, 21 and 22 of the Larceny Act, 1916.

Conversion may be committed by the following :

(1) An agent who fraudulently converts to the benefit of himself, or of any person not authorised to benefit, any property or part thereof or proceeds thereof :

(a) Over which he has been entrusted with power of attorney, viz. legal power to dispose of such property (s. 20 (i) (i));

(b) Entrusted to him for safe custody or to deal with in any particular manner (s. 20 (1) (iv) (a)) ;

(c) Received by him for or on account of another person

(2) A factor or agent entrusted with possession of goods or of any document of title to goods for the purpose of sale or otherwise, who, without the authority of his principal, for the benefit of himself or any other person other than his principal and in violation of good faith :

(a) Gives such goods or documents as a pledge or security for money, etc., borrowed or received by him ; or

(6) Accepts any advance of money, etc., on agreement deposit, transfer or deliver such goods or documents (s. 22). Thus it is a misdemeanour for a factor to obtain advances on the security of goods entrusted to his care unless he has the authority of his principal. However, the section declares that a factor is not liable to prosecution under the section where any such pledging is done for an amount which does not exceed the amount which is justly due and owing to him from his principal (s. 22).

(3) A trustee, being so created by deed, will or written instrument, or who is an executor, administrator, etc., as defined in section 46, who, with intent to defraud, converts the property concerned in the trust to the benefit of himself or some other person or purpose outside the purpose of the trust. A prosecution under this section must have the sanction of the Attorney- General, and also the sanction of the Court or Judge before whom any civil proceedings come (s. 21).

(4) A director, member or officer of any body corporate or public company who fraudulently takes for the benefit of

himself or any purpose other than the purposes of the company, any of the property of the company (a. 20 (1) (ii)).

(5) Any person authorised to receive moneys dealt with in the Municipal Corporations Acts, who appropriates (or applies) the same otherwise than as directed by law (s. 20 (1) (iii)). A Municipal Corporation can raise money, etc., as laid down in these Acts, and this section makes it a misdemeanour for any person to apply corporate money otherwise than as directed by the Acts. Offences under s. 20 where the money or property does not exceed £100 may be dealt with summarily with the consent of the accused (M.C. Act, 1952, s. 19 and 1st Sched.).

If a person has had to make admissions or disclosures in the course of any compulsory process of law *re* bankruptcy he is protected by s. 43 (2) and (3) of this Act if he is prosecuted for any of the above offences.

Proof of general deficiency is not sufficient, and fraudulent conversion of specific property should be proved (*R. v. Sheaf* (1925)). Any offence of fraudulent conversion by a public official, solicitor or trustee must be reported to the Director of Public Prosecutions (see Appendix III).

Bankruptcy Offences. The Bankruptcy Act, 1914, creates many offences against the criminal law, and the following are some of the misdemeanours that may be committed by bankrupts :

(1) Fraudulently removing property to the value of £10 or upwards (s. 154) ;

(2) Concealing, destroying, falsifying, etc., books and documents (s. 154) ;

(3) Obtaining property on credit by any false representation or other fraud and not paying for same (s. 154) ;

(4) Obtaining credit to the extent of £10 or upwards from any person without informing him that he is an undischarged bankrupt (s. 155) ;

(5) An undischarged bankrupt engaging in business under another name and not disclosing to all persons with whom he does business the name under which he was adjudicated bankrupt (s. 155) ;

(«) Concealing, disposing or removing property with intent to defraud creditors (s. 156). See also Debtors Act. 1869, which deals with persons defrauding their creditors by transferring or removing their property.

(In bankruptcy offence is a felony, namely : quitting England

and take with him, any part of his property to the

amongst his creditors (s. 159).

It is a misdemeanour for a creditor wilfully and with intent to defraud to make a false claim in a bankruptcy (s. 160).

Certain of these offences can only be prosecuted on order of

years from the date of the offence. See Stone, title " Bankrupt and Fraudulent Debtors."

Personation. Personation is the passing oneself off as another. False personation is a cheat punishable on indictment at common

or is likely to affect the public at large. Personation not covered by statute may amount to conspiracy to produce a public mischief by false pretences.

The wearing of or masquerading in the clothing of the opposite sex is not in itself an offence. The attendant circumstances, however, may justify prosecution for some specific offence, e.g. under s. 4, Vagrancy Act, 1824. See Chap. 27.

fully personate any person with intent fraudulently to obtain any land, chattel, money, valuable security or property.

Forgery Acts, 1861 and 1870, and Companies Act, 1948, *a.* 84. It is felony to falsely and deceitfully personate the owner of stocks, shares, etc., and thereby take or attempt to take the owner's interest therein or money therefrom.

Personating a woman's husband, and thereby having connection with her is rape. See Chap. 10.

Personation of a voter at an election is a felony. See Chap. 21.

Falsely pretending to act under the authority of a County Court is a felony (County Courts Act, 1959, s. 188).

Personating bail, viz. without lawful authority or excuse (the proof of which is on the party accused) acknowledging in the name of any other person any recognizance or bail before any

False personation of anyone in order to receive money payable out of Navy Funds is a misdemeanour, and may also be dealt

False personation for any purpose prejudicial to the safety or interests of the State is a misdemeanour. See " Official Secrets Acts," Chap. 20.

Personation of a customs and excise officer for any unlawful purpose is punishable summarily or on indictment and the offender may be detained (s. 7) by a constable, etc. (s. 274)

County Police Act, 1839, s. 15. It is a summary offence for any person who is not a constable appointed under the Act to put on the dress or take the name, designation or character of

act which he could not do or get done of his own authority, or for any other unlawful purpose.

See also s. 12, Town Police Clauses Act, 1847, if it applies in the police district by local Act.

Special Constables Orders, 1923, 1948. It is a summary offence to put on the dress or accoutrements or take the name, designation or character of a special constable for any unlawful purpose or without proper authority. See "Uniforms," Chap. 30.

Receiving Stolen Property. Receiving stolen property, knowing it to have been stolen, was a misdemeanour at Common Law. However, s. 33 of the Larceny Act, 1916, now provides that it is either felony or misdemeanour according to the nature of the offence by which the owner was deprived of his property.

Larceny Act, 1916, s. 33. Every person who receives any property, knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, shall be guilty of an offence of the like degree (felony or misdemeanour). This section also provides that any person who receives any mail bag, postal packet, money or property (the taking of which being a felony), knowing same to have been feloniously taken, shall be guilty of felony, and that receivers or possessors of goods stolen outside the United Kingdom are similarly guilty of either felony or misdemeanour, according to the nature of the principal offence.

A "receiver" may be tried and convicted whether the "thief" is known or has not been detected. Any number of the "receivers" may be charged and tried together (s. 40 (3)), and one (or more) may be convicted (s. 44 (5)). A "receiver" may be tried in the place where he "receives" property stolen elsewhere (ss. 33, 39).

To justify a prosecution there should be evidence :

(1) That the property was stolen or obtained under circumstances which make it probable that it was stolen or obtained under such circumstances.

(2) That the property was in the possession or control of the accused. He "receives" as soon as he obtains control over it. He cannot "receive" from himself (*R. v. Loughlin* (1951)).

(3) That the accused knew at the time he received the property that it had been stolen or criminally obtained. The knowledge of having stolen property in possession may not be sufficient in itself of guilty knowledge. However, the possession of property (whether stolen or not) raises the presumption that the possessor had or received it with guilty knowledge, and he should be convicted unless he can show to the satisfaction of the jury that he acquired the property in good faith and without knowledge that it was stolen or criminally obtained.

Utility knowledge may be proved by circumstantial evidence ; In the case of an accused who concealed the property or denied its receipt, it is sufficient to show that he knew it for much less than its value, or that he knew it was stolen or "on the quiet."

Guilty knowledge may be inferred if accused gives no explanation to account for possession or if the jury do not believe any explanation offered, (*fi. v. Aves* (1950)).

Where a person is charged with receiving property obtained in circumstances which amount to felony or misdemeanour, it is sufficient to prove that he knew that it fell into the general category of property obtained in circumstances amounting to felony or misdemeanour, as the case may be. It is unnecessary to prove that he knew that it was obtained by means of the felony or misdemeanour by which it was obtained. However, it is not sufficient to prove knowledge that the property was dishonestly obtained (*Director of Public Prosecutions v. Nieser* (1958)).

The circumstances in which accused received or got possession of goods may of themselves prove that they were stolen and that he knew they were stolen.

In a prosecution for receiving or having in possession stolen property, special evidence of guilty knowledge may be given. See "Extent of Evidence," Chap. 7.

For "Restitution of Stolen Property," see Chap. 18.

Where the stealing or taking of any property is punishable summarily under the Larceny Act, 1861, the person who knowingly receives such property may be dealt with summarily (Larceny Act, 1861, s. 97).

Knowingly buying or receiving stolen or embezzled materials from persons employed in various manufactures (iron, cotton, etc.) is punishable summarily (Frauds by Workmen Acts, 1748, 1777).

On the conviction of a pawnbroker for receiving stolen property the Court may forfeit his licence. See Chap. 31.

The keeper or occupier of a lodging-house, or place where intoxicants are sold, or place of public entertainment or resort, who knowingly lodges or harbours thieves or reputed thieves, or allows them to meet or assemble therein, or allows the deposit of goods therein (having reasonable cause for believing them stolen) commits a summary offence, and his licence (if any) may be forfeited on a first offence, and shall be forfeited on a second conviction (he being then disqualified for any such licence for two years). If two convictions occur within three years in respect of the same premises, the Court shall disqualify such premises for any such licence for a year (Prevention of Crimes Act, 1871, s. 10). If the licence is a restaurant, residential or residential and restaurant licence or a licence under the Refreshment Houses Act, 1860, the holder is liable to disqualification, as well as forfeiture of the licence, and the premises may be disqualified (Licensing Act, 1961, s. 3).

See also Chap. 10 for a similar offence by brothel keepers.

Chapter XV MALICIOUS DAMAGE

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Malicious Damage to Property. The burning of a house was the only form of malicious injury that was a crime at common law. See " Arson." All other forms of malicious damage were formerly regarded as trespasses with civil remedy only, but now the Malicious Damage Act, 1861, deals with many forms of

It is provided by section 58 that the malice need not be against to do harm " being sufficient to constitute the offence.

Malicious Damage Act, 1861. It is a crime to unlawfully and maliciously kill, maim or wound animals or to destroy, pull down

Animal*. Any cattle (such as oxen, horses, sheep, etc.). Felony. (S. 40.) Any dog, bird, beast or other animal not being cattle but being either the subject of larceny at common law (Ma " Larceny of Animals, Chap. 35 ") or being ordinarily

Summary offence. (S.41.)

Bridge*, viaducts or aqueducts. Felony. (S. 33.) Buildings, machinery, steam engines or mine erections, by persons riotously and tumultuously assembled to the disturbance of the peace. Felony if demolished. Misdemeanour if damaged (S*. 11 and 12)

Prisons, walls*, gates or stiles. Summary offence. (S. 25.)

Fishponds, mill ponds, reservoirs or pools. Misdemeanour (I. W) SM also " Fishery Laws," Chap. 19.

Hop bind* growing on poles in any plantation of hops. Wony. (S. 16.)

Hutches or fixtures attached, if done by tenants. Misdemeanour. (S.I.S.) See " Landlord and Tenant," Chap. 29.

Machinery, used (or agriculture or in any manufacture,

17fi PART III. OFFENCES AS TO PROPERTY

Mines, by letting in water, damaging machinery, etc. Felony. (Ss. 28 and 29.)

Ships, otherwise than by fire or explosives. Felony. {S. 46 }
Trees, shrubs or underwood :

(a) Wheresoever growing, if damage amounts to one shilling at least. Summary offence. (S. 22.)

(6) Growing in any park, garden, orchard, etc., if damage exceeds one pound. Felony. (S. 20.)

or belonging to a dwelling house, if damage exceeds five pounds value. Felony. (S. 21.) (Both these felonies may be dealt with summarily if accused consents (M.C. Act, 1952, s. 19 and 1st Sched.).)

Roots, plants, fruit or vegetables, growing in any garden, orchard, nursery ground or greenhouse. Summary offence, (S. 23.)

(As regards damage to allotment gardens, see the Allotments Act, 1922. The Town Gardens Protection Act, 1863, empowers the police to arrest persons found damaging public grounds in towns.)

Roots or plants, cultivated and used for food, medicine, distilling, dyeing or for any manufacture, and growing in any land open or enclosed which is not a garden or orchard. Summary offence. (S. 24.)

Works of art, such as books, pictures, statues, etc., kept in museums, churches, public buildings, etc., and public statues or monuments. Misdemeanour. (S. 39.)

Property in general. It is a misdemeanour to unlawfully and maliciously commit any damage, injury or spoil to or upon any real or personal property whatsoever either of a public or private nature, for which no punishment is provided by this

If accused consents he may be dealt with summarily (M.C. Act, 1952, s. 19 and 1st Sched.). Malicious damage by burning. See " Arson," below. Malicious injury by means of explosives. See Chap. 33. For threats to cause damage, see " Threats and Menaces," Chap. 8. Also see " Railways " and " Telegraphs," Chap. 26. There is no provision in the Act for awarding compensation on conviction of an indictable offence under the 1861 Act.

Power of Arrest. Any person found committing any offence under the Act may be arrested without warrant by any constable, or the owner of the property, or his servant or any person authorised by him (s. 61).

Any constable may arrest without warrant any person he finds lying or loitering in any highway, yard or other place during the night and whom he has good cause to suspect of having committed or being about to commit any felony against the Act (s. 57).

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(4) Station, warehouse or other building belonging to any railway, port, docks or harbour or to any canal or other navigation (s. 4).

(5)

(6) Building other than such above mentioned (s. 6).

(7) Matter or thing being in, against, or under any building under such circumstances that if the building was thereby set

to set fire to any building or thing in, against or under it, etc.,

(8) Crops of hay, com, grass, grain or pulse or of any cultivated vegetable produce whether standing or cut down or any part of any wood or plantation of trees, or any heath, gorse, furze or fern (s. 16). (This felony may be tried summarily if the

(9) Stack of corn, grain, hay, straw, etc., or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood or bark (s. 17). Any attempt to set fire to any of the things mentioned in sections 16 and 17 is also a felony (s. 18).

(10) Mine of coal or other mineral fuel (s. 26). Any attempt

(11) Ship or vessel whether complete or unfinished, or to cast away or destroy same (s. 42).

(12) Ship or vessel, or to cast away or destroy same, with intent thereby to prejudice the owner of same or of any goods on board the same, or the insurer of same (s. 43).

Any attempt to commit the felonies mentioned in sections

The arson or destruction of any of H.M. ships, arsenals, magazines, dockyards, stores, etc., is felony punishable by death

must be reported to the Director of Public Prosecutions (see Appendix III).

For powers of arrest, see " Malicious Damage," above.

Chapter XVI**COINAGE**

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COUNTERFEITING the Sovereign's money was regarded as a most heinous crime, and in 1351 the Statute of Treasons made it high treason. It is a felony under the Coinage Offences Act, 1936. The provisions of this Act, relating to silver coin now extend to the cupro nickel coinage established by the Coinage Act, 1946 (see s. 5 (1)), and will extend to coin of any other metal or mixture of metals specified in a proclamation under the Coinage Act,

" Current coin " means any coin which has been coined in any of Her Majesty's mints, or is lawfully current, by proclamation or otherwise, in any part of Her Majesty's Dominions or is lawfully current in any foreign country (1936 Act, s. 17).

" Counterfeit coin " means coin which is not current coin but is falsely made resembling any current coin, and includes any current coin which has been gilt, silvered or altered in any manner so as to resemble any current coin of a higher denomination (s. 17).

" Uttering coin " means the passing of or putting into circulation of coin.

" Uttering " includes " tendering " and " passing off." If a coin is offered in payment but refused by the person to whom it was tendered it is an " uttering." The offence is charged as " tendering, uttering or putting off."

" Impairing coin " means the clipping, diminishing or lightening of current gold or silver coin with intent to pass it off when so diminished as current coin.

Current gold or silver coin suspected to have been diminished otherwise than by reasonable wearing may be bent, cut, broken

or defaced by any person to whom it is tendered, the loss to fall on the person tendering if it proves to be impaired or counter

The offences may be grouped in four classes :

(1) *Making or altering.*

Falsely making or counterfeiting any coin resembling any current coin. F. (S. 1.)

Casing over or colouring any coin resembling any current gold or silver coin, or gilding, silvering, colouring, altering, filing

make it resemble or pass for current gold or silver coin. F. (S. 2.)

Impairing, diminishing or lightening any current gold or silver coin with intent that it might then pass as current coin. F. (S. 3.)

Defacing any current coin by stamping thereon any names or words. M. Coin so defaced is not legal tender (s. 4).

Without lawful authority or excuse, knowingly making, mending, buying, selling or having in possession any coining tools or instruments. F. (S. 9.)

Without lawful authority or excuse, knowingly conveying coining tools, coins, or metal out of any of Her Majesty's mints. F. (S. 10.)

Without lawful authority or excuse, making, selling or having in possession for sale, any medal, cast, coin, or other like thing made wholly or partially of metal and either resembling current gold or silver coin or having a device resembling a device on such current coin or being so made that it can, by colouring, etc., be made to resemble such current coin. M. (S. 8.) There is no power of arrest without warrant for this offence (s. 11).

It is a summary offence to melt down, break up or use other

Kingdom or in any British Possession or foreign country, except under licence from the Treasury (Gold and Silver (Export Control)

(2) *Dealing in counterfeit coin.*

Without lawful authority or excuse, buying, selling or trafficking in any counterfeit coin (complete or incomplete) at a lower rate or value than the same purports to be. F. (S. 6.)

Without lawful authority or excuse, knowingly importing into this country any counterfeit gold or silver coin. F. (S. 7.)

Without lawful authority or excuse, knowingly exporting counterfeit coin. M. (S. 7.)

Selling any coin, medal, etc., resembling current gold or silver coin. M. (S. 8.) (See above under " Making or altering.")

(3) *Uttering.*

Knowingly uttering any false or counterfeit current coin. M. (S. 5.)

Knowingly uttering any counterfeit current gold or silver coin and having in possession at the time any other such coin, or on the same day or within ten days knowingly uttering any other such coin. M. 2nd offence. F. (S. S.)

Uttering counterfeit current gold or silver coin of the realm, or knowingly having three or more such coins in possession, having been previously convicted of a similar offence or of any felony under the Act. F. (S. 5.)

With intent to defraud, uttering as current gold or silver coin, any coin, medal, etc., resembling current coin but being of less value. M. (S. 5.)

Uttering any current coin of the realm defaced by having words, etc., stamped on it. Summary offence, but the consent of the Attorney General is required for a prosecution. (S. 4, and see under "Making" above.)

The uttering is complete even if the counterfeit is not complete (s. 5).

(4) *Possession.*

Knowingly having in possession three or more counterfeit current gold or silver coins with intent to utter same. M. 2nd offence, F. (S. 5.)

Knowingly having in possession three or more counterfeit current copper coins with intent to utter same. M. (S. 5.)

Unlawfully and knowingly having in possession any clippings, filings, dust, etc., obtained by impairing or diminishing any current gold or silver coin. F. (S. 3.) As regards possession of coinage tools, see "Making," above.

Having in possession for sale any coin, medal, etc., resembling current gold or silver coin. M. (S. 8.) (See under "Making,"

Arrest, Seizure and Evidence. Any person may arrest any one found committing any offence against the Act, except the offence under *a.* 8, regarding medals, etc. (s. 11).

Counterfeit coin, coining instruments, or any filings, dust, etc., produced by sweating gold or silver coin, found in any place or in possession of anyone without lawful excuse, may be seized by any person and brought before a Justice. On reasonable cause of suspicion a Justice may issue a warrant to search premises by day or by night, and seize counterfeit coin, instruments, etc. (s. 11).

Persons found uttering counterfeit coins may be arrested without warrant. All the counterfeit coins should be secured and marked so that they may be afterwards identified.

Counterfeiting may be proved by circumstantial evidence, such as finding coining instruments and pieces of finished or partly finished counterfeit coin on defendant's premises. The offence

is complete even though the counterfeiting may not have been quite finished (*a. 1*).

Any credible witness may prove coin counterfeit (*a. 13*).

Where "lawful authority or excuse" is put forward as a defence, such must be proved by the accused (*ss. 6-10*).

"Possession" under the Act includes not only the personal possession or custody of the article, but also the knowingly

Intent may be proved by evidence sufficient to allow the jury to infer it; for example, accused attempted to pass the coin, or had similar coins in his possession. Guilty knowledge may be proved by evidence that accused had previously uttered counterfeit coin or had other counterfeit coins in his possession at the

All the misdemeanours under the Coinage Act, 1936, may be dealt with summarily if the Justices consider it expedient and if the accused consents (*M.C. Act. 1952, s. 19 and 1st Sched.*).

Any offence against the Coinage Offences Act, 1936, and the Gold and Silver (Export Control) Act, 1920, s. 2, must be reported to the Director of Public Prosecutions {see Appendix III}.

Counterfeit Currency (Convention) Act, 1935. This Act declares that currency notes issued by the Government of any country outside the United Kingdom and legal tender in that country, are deemed to be bank notes within the Forgery Act, 1913, and this Act (*a. 1*).

Section 2 of the Revenue Act, 1889, which prohibits the importation of imitation coin, shall apply also to imitation foreign coin (*s. 3*). See also the Customs and Excise Act, 1952.

Attempts to commit offences in connection with counterfeit currency are extraditable (*s. 4*).

Chapter XVII

FORGERY

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Forgery. Forgery is the making of a false document (or writing) in order that it may be used as genuine or the counterfeiting of certain specified seals and dies, and forgery with intent to defraud or deceive is punishable. This definition is given in s. 1 of the Forgery Act, 1913, which consolidated and amended the law relating to forgery, and which makes the forgery of many documents felony and the forgery of all other documents misdemeanour, when committed with the intent to defraud or deceive, as the case may be.

At Common Law forgery was the fraudulent making or alteration of a writing to the prejudice of another man's right and was a misdemeanour.

A document is false within the meaning of the Act :

(1) If the whole or any material part thereof purports to be made by or on behalf of a person who did not make it or authorise its making, or

(2) If, though properly authorised, the time or place of making or the identifying mark is falsely stated therein, or

(3) If any unauthorised material alteration has been made in it, or

(4) If it purports to be made by or for a fictitious or deceased person, or

(5) If it has been made with the intention that it should pass as having been made by some person other than the maker or authoriser (s. 1).

Under s. 35, C.J. Act, 1925, a document false in any way and made to be used as genuine is a forged document.

The uttering of a forged document, etc., is felony where the forgery is felony, and misdemeanour where the forgery is a misdemeanour, and is committed when a person, knowing the same to be forged and with intent to defraud or deceive, uses, offers, publishes, delivers, disposes of, tenders or exposes for

payment, sale or exchange, exchanges, tenders in evidence or puts it off in any way (s. 6). Uttering offences under this section, in relation to any document being an authority or request for the payment of money or for the delivery or transfer of goods and chattels where the amount of the money or value of the goods or chattels does not exceed £100 are triable summarily if accused consents. (M.C. Act, 1952 and C.J.A. Act, 1962, Third Sched.).

In a prosecution for forgery the intent should be shown. The intent to defraud applies particularly to documents of a private

concerns documents of an official nature, such as birth certificates, court records, etc. To deceive is to induce a person to believe a thing *to* true which is false, and to defraud is to induce by deceit a person to act to his injury. It is not necessary to prove intent to defraud or deceive any particular person (s. 17). Such

Under section 16 of the Forgery Act, 1913, a search warrant can custody or possession, without lawful authority or excuse, any banknote, or implement or materials for the forgery of a banknote, or intended to be used for the forgery of any document. This warrant authorises search and seizure.

While the principal statute is the Forgery Act, 1913, other statutes created forgery offences; for instance, the Forgery Act, 1861, the Stamp Duties Management Act, 1891, the Post Office Act, 1953, and the Customs and Excise Act, 1952. The main offences under these Acts will now be given, followed by the offences relating to paper money.

Principal Forgery Felonies.

(1) Forgery, with intent to defraud, of many specified valuable documents, such as wills, probates, bank notes, deeds, bonds, valuable securities, insurance policies, etc., etc. (1913 Act, s. 2). Some of these offences if value does not exceed £100 and accused consents may be dealt with summarily. (M.C. Act, 1952, s. 19 and 1st Sched.)

(2) Forgery, with intent to defraud or deceive, of certain documents, mostly of an official nature, such as records of births, baptisms, marriages, deaths or burials, marriage licences, documents of any Court of Justice, etc., etc. (1913 Act, s. 3).

Any offence against these two sections (2 and 3) must be reported to the Director of Public Prosecutions (see Appendix III).

(3) Forgery with intent to defraud or deceive, of certain seals and dies, such as the Great Seal, a seal of any Court of Justice, a die required by law for marking gold or silver, etc., etc. (1913 Act, s. 5).

(4) Uttering, knowingly and with intent, any forged document, seal or die, the forging of which is felony (1913 Act, s. 6).

(5) With intent to defraud, demanding, receiving or obtaining or endeavouring to obtain any money or other property on forged instruments (1913 Act, s. 7). May be dealt with summarily if the value does not exceed £100 and accused consents (M.C. Act, 1952, t. 19 and 1st Sched.).

(6) Without lawful authority or excuse, having in possession any forged stamp, die or label, as specified (1913 Act, s. 8).

(7) Altering a money order with intent to defraud, or knowingly offering or uttering any such altered money order (Post Office Act, 1953, s. 23).

(8) An officer of any Court knowingly uttering any false copy or certificate of any record, or any person knowingly delivering any false process or order of Court to any person or professing to act under any such false process (Forgery Act, 1861, s. 28).

(9) Acknowledging any recognizance or other instrument before any Court or authorised person, in the name of any other person, without lawful authority or excuse (Forgery Act, 1861, s. 34).

(10) Destroying, injuring, falsifying, etc., any official records of births, baptisms, marriages, deaths or burials (Forgery Act, 1861, ss. 36 and 37).

(11) Unlawfully dealing with the hall marks on gold or silver wares (Gold and Silver Wares Act, 1844).

(12) Fraudulently printing, altering, obliterating, mutilating, or "faking" in any way, any stamp (impressed or adhesive indicating any duty or fee, *ibid.* 27), or selling or using any fraudulently made stamp or knowingly and without lawful excuse having a fraudulently made stamp in possession (Stamp Duties Management Act, 1891, s. 13). Felonies under this section may be dealt with summarily with the accused's consent (M.C. Act, 1952, s. 19 and 1st Sched.).

See also "Post Office," Chap. 26.

Principal Forgery Misdemeanours.

(1) Forgery, with intent to defraud, of any document which it is not felony by statute to forge (1913 Act, s. 4).

(2) Forgery, with intent to defraud or deceive, of any public document the forgery of which is not felony by statute (1913 Act, s. 4).

(3) Uttering, knowingly and with intent, any forged document, seal or die the forgery of which is misdemeanour (1913 Act, s. 6).

(4) Forgery of any trade mark. See "Trade Marks," Chap. 32.

(5) Forgery of any passport or the knowingly making of a false statement for the purpose of procuring a passport (Criminal Justice Act, 1925, *ibid.* 36). This offence may be punished summarily with consent of accused (M.C. Act, 1952, s. 19 and 1st Sched.). See "Aliens," Chap. 29.

(6) Making false statements, etc., to procure naval pay pension or allowance (Admiralty Powers Act, 1865, s. 6).

(7) Forgery or deceitful use of any licence or certificate of insurance or security etc. (Road Traffic Act, 1960, s. 233).

See

Chap. 24.

(8) Forgery of a motor index mark or licence or registration

(9) Forgery, with intent to deceive, of documents required or authorised for the purposes of the Mental Health Act, 1959.

Offences as regards Paper Money.

(1) Forgery, with intent to defraud, of any bank note (defined in a. 18 of the Act) or valuable security (such as a currency

note). F. (1913 Act, s. 2.)

(2) Uttering, knowingly and with intent, any forged bank note or valuable security. F. (1913 Act, s. 6.)

(3) receiving or having in possession any forged bank note.

F.

(1913 Act, s. 8.)

(4) Without lawful authority or excuse, making, using or knowingly having in possession, any paper intended to resemble and pass as special paper used for bank notes, Treasury bills or London County bills or as revenue paper, or the instruments for making or dealing with such paper. F. (1913 Act, s. 9.)

(5) Without lawful authority or excuse, engraving or making on any material any words or devices resembling those on bank notes or stock or dividend certificates, or having such engraved material in possession, or having in possession any paper upon which such words or devices have been printed.

(6) Making, using or uttering for any purpose whatsoever any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency or bank note. Summary offence. Such documents and their plates, etc., may be ordered to be destroyed. Any person whose name appears on such a document is *prima facie* liable and he must give the name and address of the printer to the police (Criminal Justice Act, 1925, s. 38).

(7) The Currency and Bank Notes Acts. 1914 and 1928. allow the Bank of England to issue bank notes for one pound and for ten

Great Britain and Northern Ireland (1928 Act, s. 1). Currency or Treasury notes are to be deemed bank notes (s. 4).

If any person prints, stamps or impresses on any bank note,

Under the Counterfeit Currency (Convention) Act, 1935, currency notes of other countries which are legal tender are deemed to be bank notes within the Forgery Act, 1913 (s. 1), and any forged bank note or plant for forging same which is seized shall by order of the Court or Justice be delivered to the Secretary

of State or to any person authorised by him (a. 2). (The Commissioner of Police of the Metropolis has been so authorised). Attempts to forge same are extraditable (s. 4).

False Accounting. False accounting is a misdemeanour by statute, and is committed when a person responsible for correct entries in accounts makes false accounts with intent to defraud.

Falsification by Clerks. It is a misdemeanour for any clerk, officer or servant, wilfully and with intent to defraud :

(1) To destroy, alter, mutilate or falsify any book, paper, writing, valuable security or account which belongs to, or is in possession of, or has been received by him for or on behalf of his employer, or

(2) To make or concur in making any false entry or to omit, alter or concur in omitting or altering any material particular from or in any such book, document or account (Falsification of Accounts Act, 1875, s. 1).

Falsification by Company Officials. It is a misdemeanour
pany

:

(1) To receive or possess himself of any of the property of the company otherwise than in payment of a just debt or demand and with intent to defraud to omit to have a true and full entry thereof made in the books of the company (Larceny Act, 1861, s. 82).

(2) With intent to defraud, to destroy, alter, mutilate, falsify, etc., any of the books, accounts or valuable securities

(3) To make or publish any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member or creditor of the company, or with intent to induce any person to become a shareholder or partner therein or to entrust any property to such company or to enter into any security for the benefit thereof (Larceny Act, 1861, s. 84).

Factories Act, 1961. The forgery of certificates, the making or using of false entries or false declarations required under the Act, or false personation in connection with the Act is an offence

Chapter XVIII

PROPERTY

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Property In General. The word "property " has several meanings, but in police circles it is used to signify money, things or goods which come into the possession of the police, such as stolen property, lost property, prisoners' property, etc.

In legal textbooks the word " property " is also used to indicate the exclusive right of possessing, enjoying and disposing of a thing ; in other words, to mean the title or right of ownership that an owner possesses with respect to a thing which *la* his property.

What the expression " property " in the Larceny Act, 1916, includes is given fully in s. 46 of the Act. See " Property and

The owner, therefore, is said to have property in a thing which he owns. Thus the word " property " may in one sense mean an article, thing, house, or estate, and it may be used in another sense to indicate the owner's rights over that article, thing, house, or estate.

The great majority of crimes are committed in respect of property, especially as regards its possession.

For stealing and other unlawful procuring of property see " Larceny " (and its allied offences), " Breaking in," " Dealers in Old Metals," " Pawnbrokers," " Wrecks," " Public Stores," and " Army and Navy Property."

For injury to property see " Malicious Damage " and " Arson."

For possession of stolen property see " Receiving Stolen Property " and " Warrants."

For restoration of property see " Restitution of Stolen Property " and " Police (Property) Act."

For property lost and found see " Treasure Trove" and " Larceny by Statute."

Advertising rewards for the return of lost or stolen property is dealt with under the heading " Compounding Offences," Chap. 2.

Treasure Trove. Treasure trove (or treasure found) is where any gold or silver, in coin, plate or bullion, is found hidden in a house or in the earth or other private place.

If the owner is unknown the treasure belongs to the Crown. The finding should be reported to the coroner, who may hold an inquest to determine whether articles of gold or silver so found are treasure trove or not. See "Courts of Justice," Chap. 4.

Concealing the discovery of any treasure trove is an offence, being a misdemeanour at common law, and the offence may be committed by a person who receives the treasure trove knowing it is treasure trove from the finder who was ignorant of its nature.

Police (Property) Act. The Police (Property) Act, 1897, deals with the disposal of property which has come into police possession in connection with criminal matters.

On application either by the police or by a claimant of such property or where the owner cannot be ascertained a Magistrate*¹ Court may make an order disposing, as it thinks right, of any property which has come into the possession of the police:

- (1) In connection with any criminal charge, or
- (2) Under s. 103 of the Larceny Act, 1861 (seizure of stolen property on apprehension of the thief or alleged offender, or on search warrant), or
- (3) Under s. 34 of the Pawnbrokers Act, 1872 (where pawn brokers take possession of articles believed stolen, etc.), or
- (4) Under s. 66 of the Metropolitan Police Act, 1839 (seizure of suspected stolen property), or s. 48 of the City of London

Within 6 months after such an order a person may take legal proceedings for recovery of the property against the possessor under the order (s. 1).

Regulations of February 14, 1898, made under this Act by the Secretary of State, provide that all property which has so come into the possession of the police, where the owner has not been ascertained and no order of a Court has been made with respect thereto, shall be kept by the police for one year and then sold. If such property is a perishable article or if its custody involves unreasonable expense or inconvenience, the same shall be sold as soon as conveniently may be.

The proceeds of such sales are to be paid to the Police Property Fund, from which payment may be made for any expenses incurred in the conveyance, custody and sale of such property, for reasonable compensation to persons by whom property has been delivered to the police, and for any other purposes authorised by the Secretary of State. Contributions therefrom may be made for the benefit of discharged prisoners.

Where any property has been taken from a person charged before a magistrates' court with any offence, the police shall report same to the court and the court considering that it or part of it may be returned to the accused consistently with the interests

of justice and the safe custody of the accused, may direct that it or part of it shall be returned to the accused or to such other person as he may require (M.C. Act. 1952, s. 39).

Restitution of Stolen Property. When property is stolen, the thief deprives the owner of all the benefits of his ownership, but he does not deprive the owner of his ownership. The article itself is gone, but the owner still retains his property in the article that is, his legal right of ownership over the article.

misdeemeanour of stealing, taking, obtaining, extorting, embezzling, converting, disposing of or knowingly receiving his property, Assizes or Quarter Sessions can order its restoration subject to exceptions given in the section (Larceny Act. 1916, s. 45). A like power of ordering such restoration is given to a Magistrates' Court which convicts the offender summarily for

Act, 1952, s. 33).

Where any court has ordered restitution as above and such property had been sold to an innocent purchaser, the court may order payment, not exceeding the proceeds of such sale, to such purchaser out of any moneys taken from the offender on his arrest. (Larceny Act, 1916, s. 45 ; M.C. Act. 1952, s. 33.)

Police (Property) Act, 1897. restoring to the owner any stolen property which has come into the possession of the police under the circumstances given in the Act. This covers cases in which

mons or warrant but not arrested, or in which all the stolen property has not been included in the charge, or in which stolen property has been recovered as mentioned in the Act.

Under g. 30 of the Pawnbrokers Act, 1872. where a person is convicted summarily of unlawfully pawning goods or of stealing or fraudulently obtaining goods and pawning them, or where in the course of any proceedings it appears to a Magistrates' Court that goods have been unlawfully pawned, the Court may order the goods to be restored to the owner, either without payment or on

to what the Court considers just and fitting. However, this section will not apply if the goods were pledged for more than ten pounds.

The general rule as regards any sale or transfer of property is that the purchaser or receiver, even if he acts *bona fide* and pay* the fair value, acquires no better right to the ownership of the property than what the seller or giver had. Thus the true owner of an article which has been stolen or lost has the right to take civil action to recover it or its value.

There are two exceptions to this rule.

- (1) Sale in market overt (or open). When stolen goods are

sold in open fair or market for value to a *bona fide* customer, the ownership of the goods becomes vested in the purchaser. This exception to the rule is necessary to facilitate trade. However, if the owner prosecutes the thief or guilty receiver and he is convicted, the property is to be restored to the owner (Larceny Act, 1916, s. 45), the conviction cancelling the effect of the sale in market overt.

recipient, passes to that recipient, and there can be no restoration of the original article. See Larceny Act, 1916, s. 45 (2) (a).

general interests of the community. However, a recipient of stolen money or securities should prove that he received same in good faith and for value.

Where goods have been obtained by fraud or other wrongful means (such as false pretences) not amounting to stealing, a Court has to be most careful about making an order of restitution for fear that there might have been a sale of the goods a *bona fide* purchaser.

See Sale of Goods Act, 1893, s. 24, and Larceny Act, 1916, s. 45. Larceny Act, 1916, s. 46, defines "property" as including any property into which the original property has been converted or changed and anything acquired by such conversion or exchange therefore an owner of stolen money may recover from the thief any article which the thief has purchased with the stolen money. See Stone, under title "Restitution".

A Court which convicts a person of felony may, if it thinks fit, on application of any person aggrieved, award any sum not exceeding £100 by way of satisfaction or compensation for any

of a child or young person the court may order the parent or guardian to pay (C.J. Act, 1961, s. 8).

A Court, on making a probation order or an order for absolute

to pay damages for injury or compensation for loss, in summary cases up to £100 or greater sum if allowable under any other enactment (C.J. Act, 1948, s. 11 (2), C.J. Act 1961, s. 8).

Public Stores. The Public Stores Act, 1875, applies to all

or of any person in the service of Her Majesty, and such stores are known as Her Majesty's Stores.

Wools, coloured threads in the materials, etc., as described in the Act) are appropriated for distinguishing public stores. It is a

misdeemeanour to apply these marks to any stores without lawful authority, and it is felony to obliterate such marks with intent to conceal Her Majesty's property in any such stores (ss. 4 and 5).

Any person charged with having in possession any of Her Majesty's stores reasonably suspected of being stolen or unlawfully obtained, and who does not account satisfactorily to the Court how he came by the same, will be deemed guilty of a misdeemeanour and may be punished summarily (s. 7).

If such stores are found in the possession of:

- (1) A person in Her Majesty's service, or
- (2) A person in the service of a public department, or
- (3) A dealer in old metals or marine stores, or
- (4) A pawnbroker,

and he is taken or summoned before a Magistrates' Court, and the Court is satisfied such stores are or were Her Majesty's property, if such person does not satisfy the Court that he came lawfully by such stores, he will be liable to conviction and fine up to £5 (s. 9).

For the purposes of this Act stores shall be deemed to be in the possession of any person if he knowingly has them in the possession of any other person or in any premises, field or place, open or enclosed, whether occupied by himself or not, and whether for the use or benefit of himself or of another (s. 10).

A constable, if authorised in writing by a department, may stop, search and detain any vehicle or person reasonably suspected of conveying any such stores stolen or unlawfully obtained (s. 6). See also "Property of H.M. Forces," Chap. 30.

Wrecks. The Minister of Transport has the general superintendence of all matters relating to shipwrecks, and may appoint any person to be a receiver of wreck and look after wrecked property in accordance with the Merchant Shipping Act, 1894.

In addition to the shipwrecked vessel, "wreck" will include goods cast into the sea while the ship is in danger and which sink (jetsam), goods which float on the surface (flotsam) and goods at the bottom of the sea and tied to a buoy (lagan).

A receiver of wreck has power to requisition all necessary assistance for the preservation of shipwrecked persons, vessels, cargo, etc. He must be notified by the finder of all wreck found, and all wreck found which is not taken by the owner must be delivered to him. It is an offence to take wreck or to keep possession of wreck, or to refuse to deliver wreck to the receiver, who may take such wreck by force if necessary. The receiver may obtain a search warrant to search for and seize concealed wreck. The receiver has full power to protect wreck; he may arrest persons plundering or interfering with same, and may use force to suppress any interference or obstruction.

The Merchant Shipping Act, 1894, also makes it an offence to interfere with lighthouses or their lights, lightships, buoys or

beacons, or to exhibit any light or fire in such a manner as to be mistaken for a light from a lighthouse, after notice to screen or extinguish such light.

The Malicious Damage Act, 1861, ss. 47 to 49, makes it felony to exhibit false lights or signals with intent to bring any vessel into danger or to do anything tending to the loss or destruction of any vessel, or to remove or conceal buoys and other sea marks or to destroy wrecks or any articles belonging thereto.

The Offences against the Person Act, 1861, s. 17, makes it felony to prevent or impede any person in his endeavour to save life at a shipwreck, and section 37 makes it a misdemeanour to assault any person, lawfully authorised, who is carrying out his duty in connection with a wreck.

Larceny Act, 1861, ss. 65 and 66, directs that any person in whose possession wreck is found, or who is offering for sale wreck or goods reasonably suspected to have been unlawfully taken from a wreck, may be summoned to show cause, and if he cannot satisfy the Justice that he came lawfully by such goods he may be imprisoned and the goods returned to their owner. Any person to whom such goods are offered for sale, any custom* or excise officer, or any peace officer, may seize such goods and inform a Justice so that proceedings may be taken.

Larceny Act, 1916, s. 15, renders it felony for any person to steal any part of a vessel in distress or wrecked, or articles of any kind belonging to such vessel.

Hire Purchase Act, 1938. This Act, as amended by the Hire Purchase Act, 1954, defines a "hire purchase agreement" as one for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and a "credit sale agreement" as one for the sale of goods under which the purchase price is payable by five or more instalments (s. 21).

The Act applies to all such agreements under which the purchase price does not exceed £1,000 in the case of livestock (horses, cattle, sheep, goats, pigs or poultry, (s. 21) (and £300 in any other case (s. 1, as amended in 1954).

Certain requirements are prescribed as necessary before any such agreements are entered into, so that the cash price may be quite definite (ss. 2 and 3) and the seller is bound to supply documents and information on request (s. 6).

In the case of a hire purchase agreement, the hirer is given the right to determine by payment the agreement before the final payment falls due (s. 4). Certain provisions in any agreement shall be void including any condition allowing the owner to enter on premises to take possession of goods let under a hire purchase agreement (s. 5), and the hirer is bound to give information as to the whereabouts of the goods on penalty of fine (s. 7).

If one third of the hire purchase price has been paid or tendered,

the owner shall not enforce any right to recover possession of the

This restriction on recovery applies to hire purchase agreement* (to which the Act applies) made before or after the commencement

the Act the hirer refuses to give up possession of the goods to the owner the hirer shall not, by reason only of the refusal, be liable to the owner for conversion of the goods (s. 17).

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amendments, 30th August, 1954) except as above mentioned and some other points as given in s. 20.

The Advertisements (Hire purchase) Act 1957 makes provision as to the information to be included in advertisements displayed or issued in connection with hire purchase or credit sales.

Chapter XIX

POACHING

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Poaching Offences. Poaching is the offence committed by a person who pursues, kills, or takes certain game birds and animals on land where he has no right to go. It amounts to trespass on land accompanied by taking or attempting to take certain property.

Poaching Prevention Act, 1862 as amended by the Game Laws (Amendment) Act, 1960: Under these Acts "game" includes hares, rabbits, woodcocks, snipe, also pheasants, partridges, grouse, black or moor game and their eggs.

Any constable, in any highway, street or public place, may search any person whom he may have good cause to suspect

obtained or any gun, part of a gun, cartridges and other ammunition, nets, traps, snares and other devices of a kind used for the killing or taking of game.

Such constable may also stop and search any conveyance in or upon which he shall have good cause to suspect that any such game or article or thing is being carried by any such person.

Should any such game, article or thing be found, he may seize and detain same. He has no power to arrest, or to seize dogs or

If a constable makes such a seizure he should summon the person and the court, if satisfied that the accused had obtained such game by unlawfully going on any land or had used such article or thing for unlawfully killing or taking game or had been accessory thereto, may fine him £50 and may forfeit such game, gun, etc. In the event of a conviction not being recorded, the game or other thing seized, or its value, should be restored to the person from whom it was seized.

Night Poaching Acts, 1828 and 1844. As amended by the Game Laws (Amendment) Act, 1960. Under these Acts "game" includes hares, pheasants, partridges, grouse, heath or moor game, black game, bustards, woodcocks and snipes.

Unlawfully taking or destroying any game or rabbits by night in any land (open or enclosed) or public road, highway or path, is a summary offence. (1828 Act s. 1 and 1844 Act.)

By night unlawfully entering or being on any land, whether open or enclosed, with any gun, net, engine or other instrument for the purpose of taking or destroying game is a summary offence. (1828 Act s. 1).

Offenders, as above described, who assault or offer violence with any offensive weapon to owners or occupiers of land, their gamekeepers, servants or their assistants, commit misdemeanour.

Three or more persons together unlawfully by night entering or being on any land, open or enclosed, to take or destroy game or rabbits, any of such persons being armed with any offensive weapon, commit misdemeanour. (1828 Act s. 9). This offence is triable at Quarter Sessions (C.J.A. Act, 1962, Second Sched.)

Under these Acts the "night" commences at the expiration of the first hour after sunset and ends at the beginning of the first hour before sunrise. (1828 Act s. 12).

Owners, occupiers, gamekeepers and their assistants may arrest any such offenders caught in the act or in pursuit, and deliver them to any peace officer. (1828 Act s. 2).

Game Act, 1831: Under this Act "game" includes bares, pheasants, partridges, grouse, heath or moor game and black game.

The following are summary offences :

Trespassing in search or pursuit of game or of woodcocks, snipe or rabbits, on any land

(1) In the day-time (s. 30) ;

(2) And not giving real name and address, or wilfully

continuing or returning upon the land when required to quit and give name and address by the owner or occupier or other authorised person, or any police officer (Game Laws (Amendment) Act, 1960.) who in such latter case may arrest the offender and bring him before a Justice (s. 31) ;

(3) In the day-time in company with four or more persons, any of such persons having a gun and any of such persons using violence or threat to prevent any other person approaching them for the purpose of requiring them to quit or to tell their names (s. 32).

The daytime in this Act commences at the beginning of the last hour before sunrise and ends at the expiration of the first hour after sunset (s. 34).

Any prosecution should be commenced within three months of the offence (s. 41).

The Act does not apply to persons hunting or coursing with hounds or greyhounds (s. 35).

Game Laws (Amendment) Act, 1960 : this Act gives constables

additional powers to arrest, enter land, search offenders and to **seize** articles from poachers.

A police constable may arrest a person found on any land

If he reasonably suspects that a person is committing such an offence or an offence under s. 30 of the Game Act, 1831, a constable may enter on the land for the purpose of making the arrest. The power of entry does not apply to land occupied by or under the management of the Admiralty, Secretaries of State for War and Air, or the United Kingdom Atomic Energy Authority, (s. 2.)

Where a person is arrested under section 1 of this Act or section 2 of the 1828 Act, or section 31 of the Game Act, 1831, a police constable by or in whose presence he was arrested may search him, seize and detain any game or rabbits or any gun, part of a gun, etc. found in his possession, and the Court may order their forfeiture whether or not the offence concerned that game, rabbit or gun etc. If no conviction takes place, the game or other

it was seized, (s. 4.)

For the purposes of this section 4, " game ", includes hares, pheasants, partridges, grouse, heath or moor game, black game, bustards, woodcocks and snipes.

Larceny Act, 1861, *a.* 17 : To unlawfully kill or take any bar* or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether enclosed or not :

(1) during the night time (as denned above under Night Poaching Acts) *is* a misdemeanour ;

(2) during the day time (as denned above) is a summary offence.

But this section does not affect any person taking rabbits in the daytime on the tide banks in Lincolnshire.

It is also a summary offence at any time to set or use any snare or engine in any such warren for hares or rabbits (*a.* 17).

Game Laws. Several statutes, such as the Game Act, 1831, the Game Licences Act, 1860, the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906, deal with matters affecting game birds and animals.

" The unlawful pursuit and taking of game is dealt with under Poaching Offences."

If authorised by the local authority a constable may prosecute an offence under the excise Acts relating to any duty of excise in respect of licences for dealing in game, killing game and guns. (Finance Act, 1961, s. 11.)

Game is denned as including hares, pheasants, partridges, grouse, heath or moor game and black game (Game Act, 1831,

A person must not take, kill or pursue or use any dog, gun or other instrument for the purpose of taking, killing or pursuing

any game or woodcock, snipe, or coney or deer, without a game certificate (s. 23 of the Game Act, 1831, as amended by the Game Licences Act, 1860, which in s. 5 gives the cases where the possession of a game certificate is not necessary).

However the Ministry of Agriculture, Fisheries and Food may require in writing, any person to kill, take or destroy on specified land rabbits, hares, deer, foxes, etc. Non compliance will be a summary offence (Agriculture Act, 1947, ss. 98, 100 and Pests Act, 1954, s. 2).

A person who holds a game certificate does not require a gun licence, but the possession of a gun licence under the Gun Licence Act, 1870, is no defence to a prosecution for acting without a game certificate.

Before a person may deal in game he must be licensed by the District or Borough Council, and he must also obtain an excise licence from the Post Office. See "Game Dealers," Chap. 31.

Under the Game Act, 1831, s. 3 it is unlawful to take or kill game on Sunday or Christmas Day, and also during the close seasons, which are :

Pheasants, between February 1 and October 1.

Partridges, between February 1 and September 1.

Grouse, between December 10 and August 12.

Black game, between December 10 and August 20.

Other birds are in general now protected throughout the year. See "Birds," Chap. 35.

Hares. It is illegal to sell or expose native hares for sale during the months of March, April, May, June and July. (Hares Preservation Act, 1892.)

Fishery Laws, The law provides for the preservation or conservation of fish in the rivers and waters of the country and for the protection of the rights of owners of fisheries.

The Minister of Agriculture, Fisheries and Food has power to constitute Fishery Boards in charge of fishery districts, who may appoint water bailiffs and make byelaws fixing the close seasons for fish and for many other purposes.

Salmon and Fresh-water Fisheries Act, 1923.

S. 61 : Fishery Boards grant licences to fish for salmon or trout.

S. 63 : It is an offence to fish for or take salmon or trout otherwise than by means of an instrument which the fisherman is duly licensed to use for that purpose.

S. 64 : Any constable, water bailiff, member of a Fishery

Board, or person producing his licence under this Act may require any person found fishing for salmon or trout to produce his licence and give his name and address. Failure to comply is an offence.

The following acts in connection with salmon, trout or fresh-water fish are summary offences under this statute :

S. 1 : To use any light, or otter, spear, stroke haul, or like circumstances showing the intent to use same for that purpose, or to throw missiles into water for that purpose.

S. 2 : To use fish roe for the purpose of fishing, or to buy, sell or have salmon or trout roe for that purpose.

immature, or to have in possession any such unclean or immature fish.

S. 4 : To wilfully disturb any spawn or spawning fish. S. 8 : To cause or knowingly permit any poisonous substances or trade effluents to flow or be put into any waters containing fish. See also Rivers (Prevention of Pollution) Acts 1951 and 1961.

S. 9 : To use dynamite or other explosive substance or to put any noxious material into any waters or to destroy any dam or sluice, with intent thereby to take or destroy fish. (See also s. 32 of the Malicious Damage Act, 1861, Chap. IS.) Ss. 6 and 7 : To use nets in a certain manner or to use nets

Ss. 11 and 28 : To use fixed nets or other fixed engines

Ss. 26, 27, 29 and 31 : To fish for or take or obstruct any salmon or trout during the close seasons, or during the weekly close time (usually 6 A.M. Saturday to 6 A.M. Monday) except with rod and line.

Ss. 30 and 32 : To buy, sell or have in possession for sale any salmon between Aug. 31 and Feb. 1, or any trout between

this country between Feb. 1 (or March 1, as regards trout) and Aug. 31

fresh water fish in any river or lake or water communicating with any river, during the annual close season for fresh water fish (usually between March 14 and June 16). Fresh water fish include any fish living in fresh water exclusive of salmon and trout, eels and migratory fish.

This Act of 1923 contains many other provisions for the protection of fish. It gives power of entry, search, and seizure

deemed to be constables for the enforcement of the Act, and persons resisting or obstructing them are guilty of an offence against the Act (s. 67).

Any person who during the night is found illegally taking fish or at or near waters with intent illegally to take fish, or having in his possession any prohibited instrument, may be arrested without warrant by any water bailiff and his assistants and delivered to the police (*a.* 71).

200 PART III. OFFENCES AS TO PROPERTY

Larceny Act, 1861, a. 24. It is a misdemeanour to unlawfully and wilfully take or destroy any fish in any water in any land adjoining or belonging to the dwelling-house of any person who owns such water or has a right of fishery therein, but persons merely angling in such waters during the day-time commit only a summary offence (for which there is no power of arrest without warrant. See s. 103).

It is a summary offence to unlawfully and wilfully take or destroy or attempt to take or destroy any fish in any other waters which shall be private property or in which there is a private right of fishery. If the offence is committed by angling in the day-time the offender is not liable to arrest under the Act (s. 103). Under s. 25 the owner or his servants may seize the tackle of such fishers, but the angler in the day-time whose tackle has been seized is thereby exempted from any other penalty.

Sea Fishing Industry Act, 1933. s 4 (as substituted by s. 38 of the Sea Fish Industry Act, 1938). No person shall in Great

any sea fish of a size smaller than that prescribed by Order. The market authority (in their market), any officer of police and certain fishery officials, in order to enforce the section, may, at all reasonable times, board any fishing boat or enter any premises used for any business for the treatment, storage or sale of sea fish, search for and examine any sea fish and seize any sea fish kept in contravention of the section.

" Sea fish " means fish (fresh or cured) of any kind found in the sea and includes lobsters, mussels, crabs, shrimps, prawns, oysters, cockles, and any other shell fish, but does not include salmon or migratory trout (s. 9).

The Immature Sea Fish Order, 1961 give the following minimum sizes in centimetres: cod (30), haddock (27), hake (30), plaice (25),

megrims (25), whiting (25), and dabs (20).

Sea Fish Industry Act, 1938. This Act deals with the white fish industry and defines " white fish " as fish of any kind found in the sea other than herring, salmon and migratory trout and includes shell fish (s. 62). See also the White Fish and Herring Industries Acts, 1948, 1953 and 1961, and the Sea Fish Industry Act, 1951 and 1959.

Trespass.- The word " trespass " is used to describe the act of entering or being upon land or premises without any right to be thereon.

Civil action in the County Court may be taken against a trespasser, but the mere fact of a person trespassing does not make him liable under the criminal law.

A trespasser who refuses to leave on request may by his conduct tend to provoke a breach of the peace and thereby become liable to arrest and prosecution. See Chap. 22.